

Volume 3

Pages 374 - 486

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE MARILYN HALL PATEL

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	NO. CR. 07-0765 MHP
)	
MENDEL BEKER, ARIE PRILIK, and)	
NEWCON INTERNATIONAL,)	
)	San Francisco, California
Defendants.)	Thursday
)	January 13, 2011
)	8:40 a.m.

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For Plaintiff:

U.S. Department of Justice
Antitrust Division
450 Golden Gate Avenue, Room 10-0101
San Francisco, CA 94102-3478
(415) 436-6673
(415) 436-6687 (fax)

**BY: DAVID J. WARD
ANNA TYRON PLETCHER
RICHARD B. COHEN**

For Plaintiff:

U. S. Attorney's Office
450 Golden Gate Avenue, Box 36055
San Francisco, CA 94102
(415) 436-7129

BY: JEANE HAMILTON

(Appearances continued on next page)

1 APPEARANCES (CONT'D)

2 **For Defendant:** Winston & Strawn, LLP
101 California Street
3 San Francisco, CA 94111
(415) 591-1439
4 (415) 591-1400 (fax)

BY: JONATHAN ROBERT HOWDEN

5 Martha A. Boersch
6 Attorney at Law
555 California Street, 26th Floor
7 San Francisco, CA 94104
(415) 626-3939
8 (415) 875-5700 (fax)

BY: MARTHA A. BOERSCH

9 **For Defendants:** Law Offices of William L. Osterhoudt
10 135 Belvedere Street
San Francisco, California 94117-3915
11 (415) 664-4600
(415) 664-4691 (fax)

BY: WILLIAM L. OSTERHOUDT

13 **For Defendants:** Law Offices of Frank S. Moore
235 Montgomery Street, Suite 854
14 San Francisco, CA 94104

BY: FRANK S. MOORE

15 **Also Present:** Weir Foulds, LLP
16 Barristers & Solicitors
The Exchange Tower, Suite 1600
17 130 King Street West
Toronto, Canada M5X 1/5
18 (416) 365-1110
(416) 365-1876 (fax)

BY: PETER L. BIRO

P R O C E E D I N G S

January 13, 2011

8:40 a.m.

(Jury in at 8:40 a.m.)

THE COURT: Good morning, ladies and gentlemen.

THE JURORS: Good morning.

THE COURT: Listen to that. Wow. What do we have?
Some five-minute energizer stuff in there, or whatever it's
called?

JUROR: Coffee.

THE COURT: Coffee. Okay. And good morning,
Mr. Rocklin. I remind you, you're still under oath. The oath
will not be readministered. And you may continue.

(Witness resumes stand)

THE COURT: And good morning, counsel.

DIRECT EXAMINATION RESUMED

BY MS. HAMILTON

Q. Mr. Rocklin, we ended yesterday with your conversation
with Mr. Prilik on August 17th, so we'll pick up from there.

A. Okay.

Q. Now, at the close of that conversation, what, if anything,
was said about future contact between yourself and Mr. Prilik?

A. I think I will -- I said something to the extent that I'll
call in the end of week, or something like that.

Q. Now, at that time how many conversations, if any, had you
had with competitors where you had discussed ways to make

1 both -- where both companies could make money?

2 **MR. HOWDEN:** Objection. Relevance, your Honor.

3 **THE COURT:** Objection's overruled.

4 You may answer the -- you may finish the question,
5 first of all, and get an answer. Go ahead.

6 **MS. HAMILTON:** Thank you.

7 **Q.** So how many times, if ever, had you had conversations with
8 competitors where you had discussed ways where both companies
9 could make money?

10 **A.** Never.

11 **Q.** How many times, if any, had you had conversations with
12 competitors where you discussed controlling the market?

13 **A.** Never.

14 **Q.** Now, after that conversation ended, what, if anything --
15 what, if any, action did you take in response to that
16 conversation with Mr. Prilik?

17 **A.** I called our lawyers. I talked to James, and then I
18 called our lawyers.

19 **Q.** In?

20 **A.** In Washington, D.C.

21 **Q.** And when you say "our lawyers," what do you mean?

22 **A.** We had a legal team: Barnes & Thornburg.

23 **THE COURT:** You need to speak a little more clearly
24 and a little slowly, too, please.

25 **THE WITNESS:** Okay.

1 So I.

2 **THE COURT:** You had lawyers who were -- and then you
3 mentioned something beyond that.

4 **THE WITNESS:** Yes. Our lawyers were based out of
5 Washington, D.C. So I contacted them.

6 **BY MS. HAMILTON**

7 **Q.** Why did you decide to contact ATN's attorneys?

8 **A.** Because when contract was sabotaged, when pressure was
9 applied to our prime, and then the price fixing was offered, I
10 thought that that was illegal.

11 **MR. HOWDEN:** Your Honor, I'm going to object. This
12 is a legal conclusion on the part of a lay witness. It's also
13 irrelevant.

14 **THE COURT:** Well, it's --

15 The jury is instructed that you're not to consider
16 this, as to whether or not it is legally -- what was being
17 done -- legally price fixing.

18 It's just his opinion as to what was happening, which
19 is a lay opinion; but that doesn't necessarily mean that it
20 constituted what we would call "price fixing," one way or the
21 other. I'm not opining on that, either; but this is just his
22 view; his characterization.

23 **MS. HAMILTON:** Thank you.

24 **Q.** So you can continue.

25 **A.** So, because of that train of thought, I contacted our

1 attorneys and consulted them. And they thought that --

2 **Q.** And you did -- you consulted with your attorney. And I
3 don't want to get into what they said, but after your
4 consultation with your attorney, did you -- what, if, any
5 decision did -- did you make?

6 **A.** To contact authorities.

7 **Q.** And who was to contact the authorities?

8 **A.** Our lawyers.

9 **Q.** Now, why was the decision made to contact the authorities?

10 **A.** Because they advised to do. They thought that the --

11 **THE COURT:** Okay. I don't think we can have him
12 talking about what they thought.

13 **MS. HAMILTON:** Right.

14 **THE WITNESS:** Right.

15 **THE COURT:** And also, this is privileged. And so
16 you're going to have him talk about what he -- what the lawyers
17 said to them, then we've got an issue with waiving the
18 privilege. So figure out what you're going to do here.

19 **MS. HAMILTON:** I understand. Let me rephrase my
20 question.

21 **THE COURT:** Yes. Okay.

22 **BY MS. HAMILTON**

23 **Q.** Why -- after consulting, just -- did you make a
24 decision -- why did you, personally, then decide that was the
25 right thing, or -- to have the FBI contacted?

1 **THE COURT:** I think you were on the right track when
2 you said, "Did you make a decision?"

3 **MS. HAMILTON:** Okay.

4 **Q.** How about -- what, if any, decision did you decide to make
5 after the --

6 **THE COURT:** Get us out of the.

7 **THE WITNESS:** To contact the authorities.

8 **BY MS. HAMILTON**

9 **Q.** And what, if anything, happened after that?

10 **A.** Our legal team -- they structured a letter and contacted
11 the FBI office.

12 **Q.** And after -- were you then subsequently contacted by the
13 FBI?

14 **A.** Yes.

15 **Q.** And when did that occur?

16 **A.** I think a couple of days after, or so.

17 **Q.** So what's the approximate date?

18 **A.** I think the letter was sent on August 19th. And I don't
19 recall exact day, but I think it was the 21st, or something.

20 **Q.** Who, from the FBI then contacted ATN?

21 **A.** Greg Haynie, Special Agent.

22 **Q.** Did you speak with Agent Haynie at some point in time?

23 **A.** Yes.

24 **Q.** Okay. And when, approximately, was that?

25 **A.** At one point, we held a meeting at the ATN, where he

1 interviewed me.

2 Q. When? When was that date?

3 A. I think it was the 24th, or something.

4 Q. And now, who was at that meeting from the FBI?

5 A. It was Agent Haynie, and one more agent. I don't recall
6 their name right now.

7 Q. Excuse me. And where did that meeting occur?

8 A. At the ATN.

9 Q. And what subjects were discussed during that meeting?

10 A. Our previous conversation, taking place on August 17th.

11 Q. And when you say "our previous conversation," what
12 conversation are you referring to?

13 A. Our conversation with Arie Prilik and Michael Beker.

14 Q. Did you -- were any -- the conversation between Mr. Beker
15 and Mr. Prilik and yourself was discussed?

16 A. Yes.

17 Q. Anything else discussed with Agent Haynie at that meeting
18 with the FBI?

19 A. Yes.

20 Q. What?

21 A. It was overall view in the industry of night vision, and
22 more specifically, Battalion Set II.

23 Q. Was your conversation with Mr. Prilik discussed during
24 your meeting with the FBI?

25 A. Yes.

1 Q. What, if any, action did Agent Haynie then ask you to take
2 at the conclusion of this meeting?

3 A. I was asked if I'm willing to call back to Newcon, and
4 continue the conversation, and have further conversations to be
5 recorded.

6 Q. Did you agree to record those conversations right away?

7 A. Not right away, but I agreed.

8 Q. Why didn't you agree right away?

9 A. I was kind of tough decision. I had to think about it.

10 Q. What, if any, concerns did you have?

11 MR. HOWDEN: Objection, your Honor. Relevance.

12 THE COURT: Objection sustained.

13 BY MS. HAMILTON

14 Q. At some -- when, if at all, ever, did you inform
15 Agent Haynie that you would record the conversations?

16 A. I don't think I informed him. It was, again, my lawyer.

17 Q. Did -- after -- at some point in time, then, did you have
18 a contact with Agent Haynie?

19 A. Yes.

20 Q. And approximately when was that?

21 A. After I agreed for -- to continue the conversation or
22 conversations to be recorded, he came in. And I think it was
23 August the 26th. He brought in the recording equipment.

24 THE COURT: Oh, dear. This is trouble (indicating).
25 Let's see what your work is going to be now, right?

1 **MS. HAMILTON:** It might be a long day.

2 **Q.** When you met with Agent Haynie, you thought, oh,
3 approximately August 26th -- you thought?

4 **A.** Yes.

5 **Q.** Did he -- what, if anything, did he have you sign?

6 **A.** It was a release form that I am agreeing to be monitored
7 on the telephone.

8 **Q.** If you could, turn to your Exhibit Binder Number 2, to
9 Exhibit 125.

10 **MS. HAMILTON:** It hasn't been published yet. Sorry.

11 **Q.** Do you recognize this document?

12 **A.** Yes.

13 **Q.** What is it?

14 **A.** That's an authorization form.

15 **MR. HOWDEN:** Excuse me. Could you please -- we're
16 not getting that on the screen.

17 **THE COURT:** She's trying to lay a foundation for it,
18 I think.

19 **MR. HOWDEN:** We still get to look at it while she's
20 laying --

21 **THE COURT:** Don't you have copies of all of these
22 exhibits?

23 **MR. HOWDEN:** I thought it was going to be on the
24 screen.

25 **THE COURT:** Well, get out your books.

1 **MR. HOWDEN:** All right.

2 **THE COURT:** 125. You don't have it. You will in due
3 course.

4 **MR. HOWDEN:** All right. Thank you.

5 **THE COURT:** The few little niceties she has to go
6 through in order to --

7 **MR. HOWDEN:** No, we don't have that.

8 **MS. HAMILTON:** Is your signature on this document?

9 **THE WITNESS:** Yes.

10 **MS. HAMILTON:** May I publish it to the jury?

11 **THE COURT:** Any objection, since you've been
12 clamoring for it already?

13 Yes, you may publish it.

14 **MS. HAMILTON:** Thank you, your Honor.

15 **Q.** When you signed -- sorry. When you signed this document,
16 what did you understand the purpose of it to be?

17 **A.** That was me giving agreement to be monitored on the phone,
18 and for the conversations to be recorded.

19 **MS. HAMILTON:** Can we move it to be admitted?

20 **THE COURT:** And I assume there's no objection.

21 **MR. HOWDEN:** No objection.

22 **THE COURT:** 125 is admitted. It's 125 in our record.

23 **MS. HAMILTON:** Correct.

24 **THE COURT:** All right. 125 is admitted.
25

1 (Trial Exhibit 125 received in evidence).

2 **BY MS. HAMILTON**

3 **Q.** Now, did Agent Haynie provide any general instructions
4 about how to conduct yourself when recording conversations?

5 **A.** Yes.

6 **Q.** And what were his instructions?

7 **A.** To record the conversations in its entirety and,
8 obviously, not to omit anything.

9 I was also given an instructions to -- to record time and
10 the place where the conversations were taking place, as well as
11 the telephone number that I was dialing, and, by the end of the
12 conversation, to state the time as well.

13 **Q.** You stated one of the things -- you were instructed not to
14 admit anything?

15 **A.** Omit anything.

16 **THE COURT:** Omit.

17 **BY MS. HAMILTON**

18 **Q.** Omit?

19 **A.** Yeah.

20 **Q.** Excuse me. What, if any, other instructions did
21 Mr. Haynie or Agent Haynie provide?

22 **A.** In regards to the conversations?

23 **Q.** The instructions he provided in terms of how to conduct
24 yourself during the conversations.

25 **A.** I was supposed to just not to offer anything, but continue

1 the conversation, and be open for any offers.

2 **Q.** What, if any, instructions on what topics to discuss did
3 Agent Haynie provide to you?

4 **A.** I don't think we specifically discussed topics.

5 **Q.** And so did -- what, if any, equipment did Agent Haynie
6 provide to you that day?

7 **A.** It was tape-recorder, and some tapes.

8 **MS. HAMILTON:** May I have permission to approach the
9 witness?

10 **THE COURT:** Yes.

11 **MS. HAMILTON:** Thank you.

12 **THE COURT:** And you don't need to repeat the request.

13 **MS. HAMILTON:** Okay.

14 **BY MS. HAMILTON**

15 **Q.** I've handed you what's been marked as Exhibit 115. Do you
16 recognize that?

17 **A.** Yes.

18 **Q.** What is it?

19 **A.** It's a tape-recorder that I used for recording
20 conversations.

21 **Q.** Recording conversations with whom?

22 **A.** With Mr. Prilik and Mr. Beker.

23 **Q.** At the time that this -- this recording device was
24 provided to you, had you had any prior experience recording --
25 using an audio-cassette recorder?

1 **A.** I use tape-recorder for -- when I was young, to record
2 some music. That's about all.

3 **Q.** When Agent Haynie provided that machine, did you test it?

4 **A.** Yes.

5 **Q.** What did you do to test it?

6 **A.** We plugged the machine, and then we used one of the --
7 well, the microphone had to be attached to the telephone
8 receiver. And I think we made one call, or something, and
9 tried to record it, and then listen to the recording.

10 **Q.** And what was the result of your test?

11 **A.** That it was recorded, and played back accurately.

12 **Q.** Where was the tape-recorder set up?

13 **A.** In my office.

14 **Q.** And who set -- who set the tape-recorder up in your
15 office?

16 **A.** Agent Haynie. And I think there was another agent there,
17 too.

18 **Q.** And how was the tape-recorder set up?

19 **A.** It was just on my desk, and connected to where the
20 microphone was connected to the headset.

21 **Q.** And were you shown how to operate the tape-recorder?

22 **A.** Yes.

23 **Q.** Can you just show -- briefly, just demonstrate how the
24 recordings would occur. I know you don't have a phone, but how
25 was the tape-recorder then connected to the telephone?

1 **A.** For every recording, I had to use a new tape that I would
2 insert. It was a very simple operation. There are two buttons
3 to be pushed at the same time: "Record" and "Play." And also
4 at that point, I think I would push the "Pause" button, and
5 then release it to record the conversation.

6 **Q.** And is there an earbud or some other device to attach to
7 the tape-recorder?

8 **A.** Yes there is a microphone.

9 **Q.** And how -- how was that then attached to the tape
10 recorder, and also attached to the phone?

11 **A.** To the tape-recorder, there is a plug in. And to the
12 telephone, there was a small sticker; an adhesive sticker that
13 had to be attached to the headset.

14 **Q.** And was that the machine that you used to record all of
15 your conversations with the defendants?

16 **A.** Yes, I believe so.

17 **Q.** Could we move to admit the tape-recorder, your Honor?

18 **THE COURT:** Any objection?

19 **MR. HOWDEN:** No objection, your Honor.

20 **THE COURT:** That's -- 115 is admitted.

21 **MS. HAMILTON:** Yes, your Honor. Thank you.

22 (Trial Exhibit 115 received in evidence)

23 **BY MS. HAMILTON**

24 **Q.** Did Agent Haynie provide any audio cassette tapes to you?

25 **A.** Yes.

1 Q. And at the time did you -- were the tapes blank?

2 A. Yes.

3 Q. How did you know they were blank?

4 A. They were -- they were brand new tapes that were packaged
5 in cellophane.

6 Q. What, if any, instructions did Agent Haynie provide to you
7 about what to do --

8 And you did record conversations with the defendants,
9 though, right?

10 A. Yes.

11 Q. What, if any, instructions did Agent Haynie provide about
12 how to care for the tapes after they were used to record a
13 conversation?

14 A. That I was supposed to contact Agent Haynie, and tell him
15 that a conversation occurred, and give him tapes. And while I
16 had the possession of the tapes, they had to be stored securely
17 somewhere.

18 Q. You were asked --

19 And did you, then, store those tapes securely?

20 A. Yes.

21 Q. What did you do?

22 A. They were -- after I recorded something, and before I was
23 giving it to Agent Haynie, they were in my desk, in my office.

24 Q. How were they secured in the desk of your office?

25 A. There was no lock on my desk, but if I would leave my

1 office, I would lock it.

2 **Q.** Did you ever deviate from locking your -- your office door
3 when you left it?

4 **A.** No.

5 **Q.** And you testified that you called Agent Haynie after the
6 telephone conversation was recorded. Were there times when
7 he -- Agent Haynie -- was there when the conversation occurred?

8 **A.** Yes.

9 **Q.** And what -- when you did call Agent Haynie, what, if
10 anything, did he do when you called him?

11 **A.** I think, with the exception of the first two tapes, where
12 he was there, he would come in and pick up the tapes, and
13 interview me. Also, I would mark the tapes with a Post-it
14 notes. And he would copy the time, and pick up the tape.

15 **Q.** Now, between the time that Agent Haynie then picked up the
16 tape, and the time after the recording occurred, did other
17 people have access to any of the recordings that you made?

18 **A.** No.

19 **Q.** Why not?

20 **A.** There were either in my desk or -- always in my desk, or
21 in the locked office.

22 **Q.** How many conversations with the defendants did you record?

23 **A.** I think total was 12 conversations.

24 **Q.** And have you listened to the actual the original audio
25 recordings of each of those conversations?

1 **A.** Yes.

2 **Q.** And did those audio recordings accurately reflect the
3 conversations that you had?

4 **A.** Yes.

5 **Q.** Now, and for each of those 12 conversations, have you
6 listened to computer copies of those audio -- original audio
7 cassettes?

8 **A.** Digital copies? Yes.

9 **Q.** And do the digital copies -- are they -- what, if any,
10 differences are there between the digital copies and the
11 original audio-cassette copies?

12 **A.** I believe that they're exact copies.

13 **Q.** Were each of the 12 conversations that you had with the
14 defendants -- was the language spoken primarily in Russian, or
15 in English?

16 **A.** Russian.

17 **Q.** And have you reviewed the translation -- English
18 translation? And were there English translations that you
19 reviewed for each of those conversations?

20 **A.** Yes.

21 **Q.** Do you -- did the -- English translations accurately
22 reflect the conversations that you had with the defendants?

23 **A.** Yes.

24 **Q.** So let's turn, then, to the first conversation that you
25 had with the -- one of the -- with the defendants that you

1 recorded. When did that occur?

2 **A.** August the 26th; the same date.

3 **Q.** And who did you speak with on August 26th?

4 **A.** Arie Prilik.

5 **Q.** How did you come to speak with Mr. Prilik on that day?

6 **A.** I dialed the general number, and then his extension.

7 **Q.** And how did you know what Mr. Prilik's extension was?

8 **A.** From the past conversations.

9 **Q.** Was anyone in with you in your office at the time you
10 placed that -- that phone call?

11 **A.** Yes.

12 **Q.** Who?

13 **A.** Agent Haynie.

14 **Q.** And did you -- you called Mr. Prilik. Did you
15 subsequently speak with him?

16 **A.** Yes.

17 **MS. HAMILTON:** Okay. So let's go ahead, if we could
18 play Clip Number One, which is -- begins on the English
19 transcripts on page 1, line 1, through page 2, line 24, if we
20 can. And we can publish those to the jury, your Honor?

21 **THE COURT:** Yes.

22 (Audio clip played)

23 **THE COURT:** Can you possibly turn it down a little
24 bit?

25 (Audio clip played)

1 **BY MS. HAMILTON**

2 **Q.** Is that the beginning of the first conversation that you
3 had that you recorded with Mr. Prilik?

4 **A.** Yes.

5 **Q.** So, your Honor, we'd move to admit Exhibit 101, which is
6 the audio -- the audio recording, and Exhibit 131, which is the
7 English translation.

8 **MR. HOWDEN:** Your Honor, it -- I don't expect to
9 object to it coming in, but I don't think the complete
10 foundation's been laid.

11 I'd like to see the -- the -- at least identified,
12 the cassette that was used for this recording, and get that
13 linked up to the digital audio.

14 **THE COURT:** Do you have those?

15 **MS. HAMILTON:** We have the cassette, your Honor.

16 **THE COURT:** Mm-hm.

17 **MS. HAMILTON:** And --

18 **THE COURT:** Are they marked, such that he can tell by
19 looking at them, and identify them?

20 **MS. HAMILTON:** Yes.

21 **THE COURT:** Then why don't you go ahead and do that?

22 **MS. HAMILTON:** Okay.

23 **Q.** So Mr. -- Mr. Rocklin, I'm handing you what's been marked
24 as Exhibit 131. Do you recognize this?

25 **A.** Yes.

1 Q. And what is it?

2 A. This is the first tape of the conversation.

3 Q. Of what conversation?

4 A. This is the conversation with Arie on August the 26th.

5 Q. And how do you know that?

6 A. There's a date on it. This is one of the first tapes.

7 They actually were Department of Justice marked. And it's also
8 marked "Number 1."

9 Q. And have you listened to that recording?

10 A. Yes.

11 Q. And have you listened to a digital -- the digital
12 recording being played to the jury today?

13 A. Yes.

14 Q. And are they the same?

15 A. Yes.

16 MR. HOWDEN: Thank you very much. That's all I was
17 asking.

18 THE COURT: Okay. Now, the transcription is -- or --
19 is 101. And the tape is 131. Is that correct?

20 MS. HAMILTON: Yeah. The transcription is 131 -- is
21 101. And the tape is 131.

22 THE COURT: Right. Okay. And any objection now to
23 those being admitted?

24 MR. HOWDEN: No, your Honor.

25 THE COURT: Okay. They are admitted.

1 **MS. HAMILTON:** Thank you.

2 (Trial Exhibits 101 and 131 received in evidence)

3 **BY MS. HAMILTON**

4 **Q.** Now I'd like to ask you about the beginning of the
5 conversation. On page 2, line 16, you said -- you referred to,
6 "The last time when we were speaking, last time, I was very
7 busy."

8 Why did you say that?

9 **A.** Because I was referring to the conversation in August 17th
10 with Arie.

11 **Q.** Now what, if any, topics that were discussed on
12 August 17th did you also discuss with Mr. Prilik on
13 August 26th?

14 **MR. HOWDEN:** Well, your Honor, the tape speaks for
15 itself. If there are additional topics on this tape of the
16 26th, we should just play the tape.

17 **THE COURT:** Objection's overruled.

18 You may answer the question.

19 **THE WITNESS:** It was discussion of -- much -- for
20 Battalion Set II, and for night-vision goggles, and overall,
21 Arie's perspective on the market.

22 **BY MS. HAMILTON**

23 **Q.** What, if anything else, was also discussed? The topics.

24 **THE COURT:** Are you referring to August 18th now,
25 still?

1 **BY MS. HAMILTON**

2 **Q.** What was discussed on August 26th that had also been
3 discussed on August 18th?

4 **THE COURT:** Oh, okay.

5 **THE WITNESS:** Again, about -- just like in the
6 August 17th, it was about the -- if the price would be
7 controlled, and we -- and the product would be sold 10 to 15
8 percent less.

9 **MR. HOWDEN:** Your Honor, I need to renew my
10 objection. I mean, Mr. Rocklin is characterizing a
11 conversation that's been put into evidence. The jury hasn't
12 had a chance to -- to see what was actually said. And I don't
13 think the Court can evaluate his characterization of it until
14 we see exactly what is said.

15 **THE COURT:** The objection's overruled.

16 **MS. HAMILTON:** Thank you.

17 **Q.** I'd like to turn to the second clip, which begins at page
18 4, line 10. And we'll play through page 5, line 4.

19 (Audio clip played)

20 **BY MS. HAMILTON**

21 **Q.** I'd like to turn your attention to page 4, line 10, of
22 this portion of the conversation.

23 You, again -- excuse me -- referred to the last time. And
24 Mr. Prilik said, you -- and then you said the last time. And
25 then you said you started telling me something.

1 And Mr. Prilik said, on line 13, "Concerning the other
2 project," to which you replied, "Yes, naturally."

3 Why did you say that: "Yes, naturally"?

4 **A.** Because I was confirming that a subject of conversation
5 here was whatever we discussed in the past, on August 17th:
6 The Battalion Set II.

7 **Q.** So you understood -- and how did you believe that this was
8 about Battalion Set II contract -- this conversation, here?

9 **A.** Because later on, we were talking about it as well.

10 **Q.** Let me then turn your attention to -- starting at page 4,
11 line 17, in which Mr. -- oh, I apologize. Excuse me.

12 Looking to page 4, line 17, Mr. Prilik said: I can give
13 my unofficial opinion.

14 And then on line 17, the unofficial -- "Yes, the
15 unofficial opinion, because the official opinion is reserved
16 for the boss with us," to which you reply, on line 19, "Yes,
17 well, that's clear."

18 Why did you say that?

19 **A.** I was agreeing with Arie that my understanding that
20 Michael Beker still was the boss, and decision maker.

21 **Q.** Did -- and -- did you understand -- who did you understand
22 Mr. Prilik was referring to when he said "the official" -- or
23 "the boss"?

24 **A.** Michael Beker.

25 **Q.** And why did you believe that Mr. Prilik was referring to

1 the boss to be Mr. Beker?

2 **A.** He was CEO and president of the company.

3 **Q.** Now, starting at page 4, line 24, Mr. Prilik said to you,
4 "And if we coördinated something jointly, then, as a result,
5 both our companies would make much more than provisionally
6 those 100 or \$200 that you most likely make, and on that, with
7 great difficulties."

8 Were you surprised when Mr. Prilik suggested coördinating
9 jointly?

10 **MR. HOWDEN:** Objection, your Honor. Relevance.

11 **THE COURT:** Objection sustained.

12 **BY MS. HAMILTON**

13 **Q.** What, if anything, did you understand Mr. Prilik to be
14 proposing by coördinating jointly?

15 **MR. HOWDEN:** Your Honor, this calls for an
16 explanation for something that's right there in front of the
17 jury.

18 **THE COURT:** The objection is overruled.

19 I mean, his understanding, because it's -- the
20 conversation goes on. And I assume that conversation is based
21 on his understanding, and -- as well as, of course, whoever
22 else was in the conversation.

23 So you may answer the question, if you have it in
24 mind.

25 **THE WITNESS:** My understanding is that Arie was

1 offering some sort of price-fixing scheme here, where both of
2 the companies -- Newcon and ATN -- would benefit.

3 **MR. HOWDEN:** Well, your Honor, I mean, this is my
4 point. We're now -- he's offering opinions about legal issues.

5 **THE COURT:** Well, and the jury has already been
6 instructed. And I'll remind them that this is his
7 interpretation of what was meant, and not some legal
8 definition, or whether it meets the legal definition of, quote,
9 "price fixing."

10 **BY MS. HAMILTON**

11 **Q.** Now, as -- there's -- Mr. Prilik then references, on page
12 5, line 2, "And provisionally, those 100 or \$200 that you most
13 likely make."

14 As part of the contract negotiations with ITE, did ATN
15 estimate the profits expected to make on the sales of
16 night-vision goggles under the Battalion Set II contract?

17 **A.** Yes.

18 **Q.** And Mr. Prilik refers to the 100 or \$200 you most likely
19 make.

20 How close, if at all, was ATN's profit margin to
21 Mr. Prilik's estimate?

22 **A.** It was a close estimate for the gross profit.

23 **Q.** Okay. And during this conversation, did you and
24 Mr. Prilik discuss whether or not other night-vision-goggle
25 suppliers could supply Generation II night-vision goggles,

1 under the Battalion Set II contract?

2 **A.** Yes.

3 **MS. HAMILTON:** If we could, play the third clip,
4 which is page 5, line 5, to page 7, line 18.

5 (Audio clip played)

6 **BY MS. HAMILTON**

7 **Q.** All right. I'd like to ask you a few questions about this
8 segment. On page 5, beginning at line 5 through 7, you state,
9 "Yes, there are enough difficulties; this is, for sure. Ah,
10 between the TACOM and Russia, I have this headache."

11 When you say, "I have this headache," what did you mean,
12 or why did you say that? Excuse me. Why did you say that?

13 **A.** Well, because in the past conversation, on August 17th,
14 Michael admitted that he was a source of complaints to TACOM,
15 and also one of the shipments in Russia was held. So this is
16 the two things I was referring to.

17 **Q.** And when you say, "One of the shipments was held," can you
18 please explain in a little more detail what you're talking
19 about?

20 **A.** One of the shipments that NPZ was sending over to us --
21 approximately 350 units, after they deliver over two and a half
22 thousand units -- was stopped, and held by Russian Customs.

23 **Q.** Okay. Thank you. And so did that have an impact on ATN's
24 ability to deliver goggles for some period of time?

25 **A.** Yes.

1 Q. Was that problem resolved?

2 A. Yes.

3 Q. I'd like to now turn your attention to page 5, line 19.

4 Mr. Prilik asked, "And what would the Americans do if,
5 shall we say, neither the ATN nor Newcon would deliver the
6 goggles? Where would they get the goggles of the second
7 generation, and at what price, if that's not a secret?"

8 Who did you understand "the Americans" to be, in that --
9 the reference to "the Americans" by Mr. Prilik, in that
10 context?

11 A. TACOM.

12 Q. And why did you believe that to be the case?

13 A. Because we were discussing here Battalion Set II.

14 Q. And, given your understanding of the market in 2005, where
15 would TACOM get night-vision goggles for the Battalion Set II
16 contract, if ATN were -- and Newcon would not deliver those
17 night-vision goggles?

18 A. Probably they could get it from another source, but that
19 would be for a much higher price.

20 Q. Now, on page 6 at line 2, Mr. Prilik then asks would he
21 been able to find anything today that is cheaper than 2,000 to
22 \$2,500.

23 You replied, "If it not us? Not likely, especially in
24 such quantities."

25 Why did you say this?

1 **A.** Because Mr. Prilik here was referring to the next level of
2 pricing, based on a different tube supplier --
3 image-intensifier tube supplier.

4 **Q.** On page 6, line 8, Mr. Prilik then said, "What are the
5 cheapest tubes in quantities that could be delivered by" -- and
6 then: Unintelligible.

7 Are you familiar with the term "tubes," as used on line 8?

8 **A.** Yes.

9 **Q.** And what does that phrase mean to you?

10 **A.** Image-intensifier tubes; the core of night-vision
11 equipment.

12 **Q.** And Mr. Prilik refers to or asks, "What are the cheapest
13 tubes in quantities that could be delivered by" -- and it's
14 unintelligible.

15 Did you have what -- who did you understand -- or did you
16 understand who the recording was referring to?

17 **MR. HOWDEN:** Objection. Lack of foundation. That
18 calls for speculation: What Mr. Prilik was thinking at the
19 time.

20 **THE COURT:** Well, the question was what he
21 understood; what the witness understood.

22 You may answer the question as to what you
23 understood.

24 **THE WITNESS:** I had the pretty clear understanding
25 that the conversation was here about DEP Photonis, a

1 conglomerate and producer of second-generation -- high-end
2 second-generation, in France and Netherlands; and more
3 specifically, mentioned here a merger that just happened
4 between these two companies.

5 **Q.** And --

6 **A.** At that time.

7 **Q.** And what, if any, significance does the reference to the
8 merger have to you?

9 **A.** Well, that indicates that we are talking here about
10 DEP Photonis.

11 **Q.** And in 2005, were you familiar with the company
12 DEP Photonis?

13 **A.** Yes.

14 **Q.** How did you come to be familiar with that company?

15 **A.** Throughout years we were conducting business. We were
16 also dealing with DEP Photonis.

17 **Q.** And -- and in 2005 what, if any, products did DEP Photonis
18 sell?

19 **A.** DEP Photonis was a manufacturer of, among other products,
20 but most in terms of night-vision equipment, they were
21 producing second-generation high-end image-intensifier tubes.

22 **Q.** Did -- so image-intensifier tubes.

23 Were you aware of whether or not Photonis also
24 manufactured the systems the tubes went into?

25 **A.** Yes. There were not manufacturing systems.

1 Q. Okay. On page 6, line 15, Mr. Prilik said, "I think that
2 today, they wouldn't even go as low as these prices if they
3 don't have competition," to which you replied, "Right. They
4 are busy."

5 Why did you say that?

6 A. Although Photonis could provide competitive pricing for
7 small amount of tubes, there were flooded at that time with
8 orders, and they were busy. And if -- on the large volume, the
9 prices would be a lot higher.

10 MR. HOWDEN: Your Honor, there's no foundation for
11 any of this. He's really just opining, going far beyond --

12 THE COURT: The objection is overruled.

13 He's in the business, and he can give his lay
14 opinion. It's not an expert opinion, but it's -- certainly, he
15 can give his opinion as to what the market is doing in that
16 respect.

17 BY MS. HAMILTON

18 Q. Did -- let me then turn your attention now to page 7, line
19 1. Mr. Prilik asked, "Yes. And are there other literate
20 people besides Newcon and ATN that would be able to get, in
21 quantities, the inexpensive Russian goggles?"

22 You said, "Of course not. I don't think so."

23 What did you understand Mr. -- first, Mr. Prilik's
24 reference to "inexpensive Russian goggles" to mean?

25 A. Night-vision goggles with Generation II.

1 Q. And why did you say, "Of course not. I don't think so"?

2 A. I was agreeing with Mr. Prilik there were just few
3 companies in the market that could deliver the product in
4 needed quantities for such contract.

5 Q. And you say "for such contract." Which contract?

6 A. Battalion Set II.

7 Q. Now, on page 7, line 8, Mr. Prilik then asks about --
8 says, "There are -- and a what about Comrade Max"?

9 Did you understand -- what did you understand Mr. Prilik's
10 reference to "Comrade Max" to be?

11 A. He was referring to a principal of another night-vision
12 company, N-Vision: Max Rivkin.

13 Q. Why did you believe that was the individual being referred
14 to?

15 A. We just had the common understanding. I didn't know any
16 other Maxes in the night-vision industry, so --

17 Q. Now, and there's a reference to -- or you said Max Rivkin
18 was the principal in a company called N-Vision?

19 A. Yes.

20 Q. What -- in 2005, what, if any, night-vision devices did
21 N-Vision sell?

22 A. Various night-vision devices; among them, Generation II
23 goggles.

24 Q. Now, in 2005, based on your observations of the market,
25 did you believe that N-Vision would be able to supply the

1 quantities of night-vision goggles required under the
2 Battalion Set II contract?

3 **A.** It was possible, but highly unlikely.

4 **Q.** I'd like to now turn your attention to page 16, line 17.

5 Oh, excuse me. Page 6, yes. 16. Sorry. No. I apologize.

6 I --I have the wrong cite. Page 7, line 18. I apologize.

7 Mr. Prilik said, "And who was the manufacturer of the
8 IITs? That's the key to the whole thing," to which you reply,
9 "Yes. That's for certain. That's for certain."

10 Why did you answer Mr. Prilik in that way?

11 **A.** Because it was a lot of manufacturers of night-vision
12 systems. There were just a handful of manufacturers of the
13 core technology: Image-intensifier tubes. So those who could
14 somehow control the manufacturing and distribution of
15 image-intensifier tubes, therefore, could control the market.

16 **Q.** If we can now -- and was ITE discussed during this
17 conversation?

18 **A.** Yes.

19 **Q.** If we could, listen to Clip Four, which begins at page 7,
20 line 18, and continues through page 10 to line 6.

21 (Audio clip played)

22 **BY MS. HAMILTON**

23 **Q.** If I could turn your attention to page 7, line 22. You
24 said, "You understand, don't you, that for me to go to
25 Jordanian, as you say, and raise all that stench."

1 When you said, "the Jordanian, as you say" -- why did you
2 say that?

3 **A.** Because in the past conversations, Michael and Arie were
4 referring to president of ITE, Ramzi Abu-Taleb, as Jordanian.

5 **Q.** And you then, on -- starting on page -- excuse me. Line
6 22, say -- refer to, "raising all that stench."

7 What stench were you referring to there?

8 **A.** We were discussing, here, a possibility of raising prices,
9 and obviously, prime would be unhappy about it.

10 **Q.** Turning now your attention to page 8, line 12, Mr. Prilik
11 stated that, "I doubt that TACOM will ever give him something
12 again," and then said, beginning on line 16, "I don't know.
13 There are two questions. What to do with the remainder of this
14 contract, and what to do with the next one," to which you
15 replied, on line 25, "I've got it."

16 Why did you say "I've got it" there?

17 **A.** The discussion was, here, about actual Battalion Set II.
18 Although the whole contract was awarded already, Prilik's take
19 that only first phase will be awarded, and second and third
20 phase will not be awarded to ITE.

21 **Q.** And just so we have the numbers clear, how many goggles
22 were involved in -- or did you understand were to be ordered
23 under the phase-one portion of the Battalion Set II contract?

24 **A.** 6,371.

25 **Q.** And for the second and third phase, how many night-vision

1 goggles were -- were remaining to be supplied under that
2 portion of the contract?

3 **A.** Approximately the same amount for each phase.

4 **Q.** So 6,371 times two?

5 **A.** That's right.

6 **Q.** Did you understand why -- what -- how it was going to be
7 that the second and third phases of the -- of the contract for
8 the Battalion Set II were not going to be assigned or continue
9 to be supplied by ITE, under Mr. Prilik's belief?

10 **MR. HOWDEN:** Well, that really does call for
11 speculation.

12 **THE COURT:** Yes. Objection sustained. That sort of
13 wandered off there at the end.

14 **BY MS. HAMILTON**

15 **Q.** If we could -- I'll just turn your attention to page 8,
16 line 21. Mr. Prilik said, "Because I don't think that they
17 would give him the rest of the order. So, whether you would be
18 able to deliver these 6,000 or not, but the balance would be up
19 for grabs."

20 At this point in time -- oh, and you responded -- I'm
21 sorry -- on page 9, line 2, "Well, I've got it."

22 Why do you think so; that it would be up for grabs? Why
23 did you say that?

24 **A.** Because my understanding that -- full contract was already
25 awarded. And both phase two and phase three had to be

1 delivered by ITE.

2 **Q.** Now, on page 9, beginning at line 20, Mr. Prilik said that
3 the balance of the order -- they would either give it back to
4 AHNHAM, or throw it again to the tender.

5 On line 20 Mr. Prilik refers to "they" would either give
6 it back to ANHAM. Who did you understand "they" to be, in that
7 context?

8 **A.** TACOM.

9 **Q.** And why did you believe that TACOM was the reference
10 there, to them?

11 **A.** Because TACOM was the discussion here. And TACOM was the
12 one who would award the contract.

13 **Q.** And in 2005, were you familiar with a company called
14 "AHNHAM"?

15 **A.** Yes.

16 **Q.** And did you -- what -- how were you familiar with that
17 company?

18 **A.** AHNHAM was a prime consolidator for Battalion Set I for
19 delivery of different product.

20 **Q.** And when, on line 21, Mr. Prilik refers to "they would" --
21 they would either give it back to the ANHAM, or throw it again
22 to tender. What was your understanding about the pronoun "it"?
23 What was "it" referring to in this -- in your understanding, in
24 this context?

25 **A.** Remainder of Battalion Set II.

1 Q. Now, are you familiar with the term "tender"?

2 A. Yes.

3 Q. Okay. Mr. Prilik said, beginning on line 22, "or they'll
4 throw it again to the tender."

5 What does the term "tender" mean to you?

6 A. In this context, it's referring to the bidding process.

7 Q. Did you understand what "throw it again" -- in this
8 context, what did it mean to you?

9 A. Well, there are two scenarios here. One is, it's going to
10 be given back to the AHNHAM, just passed through; because if
11 ATN will not perform, and Newcon was delivering goggles for
12 Battalion Set I to AHNHAM.

13 Or the second scenario, where it would be going back for
14 bidding process, and then Newcon would be in a good shape to
15 receive that.

16 Q. If we can then turn and play the next portion, which is
17 page 12, line 10, through page 15, line 15.

18 (Audio clip played)

19 **BY MS. HAMILTON**

20 Q. If I could turn your attention to page 13, line 7, you
21 said, "As I understand it -- as you said, that it's
22 unofficial," to which Mr. Prilik replied, "It's absolutely
23 unofficial."

24 And then on line 9 you replied, "No. I know the way
25 Michael can get."

1 And Mr. Prilik said, "I know, but he only likes," to which
2 you replied, "Yeah."

3 Mr. Prilik said, "I've been living with him somehow for 15
4 years."

5 And you said, "Yes."

6 And on line 16, Mr. Prilik said, "And he's been somehow
7 listening up until now," to which you replied, "Well, that's
8 what I think as well."

9 Why did you say that?

10 **A.** At that point, my understanding was that Arie's proposal
11 was unofficial, and for the proposal to become official, it had
12 to be approved by Michael. He was the decision maker of the
13 company. And that's the discussion here; what it's all about.

14 **Q.** Then did you and Mr. Prilik discuss phase one of the
15 night-vision -- of the night-vision-goggle portions of the
16 Battalion Set II contract again in this conversation?

17 **A.** Yes.

18 **Q.** Let's then listen to Clip Number Seven, which is page 15,
19 line 9, through page 16, line 21.

20 (Audio clip played)

21 **BY MS. HAMILTON**

22 **Q.** So if I could turn your attention to page 15, beginning at
23 line 14, Mr. Prilik says, "I have an approximate notion of how
24 much you are making on this contract, and I think that you are
25 making terribly little," to which you replied, certainly, on

1 line 16, "Absolutely correct. That which you said at the
2 beginning of the conversation is very close to reality."

3 Why did you say this?

4 **A.** Because I was confirming that what we were making -- the
5 previous estimate, the 1- to \$200 of what we were making was
6 the right estimate.

7 **Q.** And on page 15, beginning at line 24, Mr. Prilik says --
8 said, "Oh, if the goggles were sold conditionally for \$2,000."

9 At the time of this conversation, were you aware of the
10 price at which ATE [sic] was selling night-vision goggles to
11 TACOM?

12 **A.** ITE?

13 **Q.** Yes.

14 **A.** Yes.

15 **Q.** How did you know how much ITE was charging TACOM?

16 **A.** In the logistics process, we had to fill out the paperwork
17 at the time of the shipping. That had price that ITE was
18 charging TACOM.

19 **Q.** And when you say in the part of the logistics, what do you
20 mean?

21 **A.** There was a specific document: DD250. It's a form based
22 on which government would accept a delivery, and later on
23 process a payment.

24 **Q.** And was ITE's price on that document?

25 **A.** Yes.

1 Q. And how did you understand that price came to be there?

2 A. We were told by ITE what price should be there.

3 Q. And then you put that price on that document?

4 A. Yes.

5 Q. And what number did you put down?

6 A. \$1,760.

7 Q. Now, on page 15, line 24, Mr. Prilik suggests that goggles
8 sold conditionally for \$2,000.

9 And you stated that the goggles were -- at the time, TACOM
10 was paying \$1,760.

11 So approximately how much of a minimum increase was
12 Mr. Prilik's suggestion, from the current price being paid to
13 TACOM?

14 MR. HOWDEN: Objection, your Honor. That just
15 completely lacks foundation. The price to whom, when?

16 THE COURT: If you'd lay a foundation.

17 Objection is sustained as it stands now.

18 BY MS. HAMILTON

19 Q. You just testified that you saw documents in which -- that
20 you wrote down the price that ITE was charging TACOM, correct?

21 A. Yes.

22 Q. And Mr. Prilik was suggesting that prices could be sold
23 conditionally for \$2,000, correct?

24 A. Yes.

25 Q. Did you have an understanding to whom those goggles would

1 be sold for \$2,000?

2 **MR. HOWDEN:** Objection, your Honor. There's still no
3 foundation. There's no mention to whom they're taking about
4 selling these goggles, and who Mr. Prilik is referring to.
5 This is just speculation.

6 **THE COURT:** Objection's overruled. No speaking
7 objections. Okay? The objection is overruled.

8 You may answer the question.

9 **THE WITNESS:** Even if the goggles would be sold at
10 \$2,000, not to the prime, but at this level, to the TACOM, that
11 would be a minimum of \$240 increase.

12 **BY MS. HAMILTON**

13 **Q.** And when you say, "not to the prime, but just to TACOM,"
14 what do you mean?

15 **A.** Well, if the \$2,000 would be sold to AHNHAM or ITE, then
16 it would be resold to the TACOM for even higher.

17 **MR. HOWDEN:** Again, there's -- there's no foundation
18 for that. It's total speculation.

19 **THE COURT:** Objection is overruled.

20 **BY MS. HAMILTON**

21 **Q.** Now I'd like to turn your attention to page 16, line 12.
22 Mr. Prilik said, "That is to say, approximately the same that
23 you earn today."

24 "You could" -- starting on line 15 -- "continue to earn, I
25 don't know, from us. We would sign, give the word of honor,

1 and pay honestly," to which you replied, on line 20, "I've got
2 it."

3 Why did you say that?

4 **A.** I understood that the proposal was made, some sort, where
5 ATN could make money by not performing on the Battalion Set II,
6 and money was made from Newcon.

7 **Q.** What would ATN do to earn this -- this -- the payment from
8 Newcon at this -- at this time?

9 **MR. HOWDEN:** Again, lack of foundation. Calls for
10 speculation.

11 **THE COURT:** The objection's overruled.

12 **THE WITNESS:** I don't think there is a solid scenario
13 at this point, so --

14 **BY MS. HAMILTON**

15 **Q.** Now, did the conversation of increasing prices under ATN's
16 current contract with ITE come up in this conversation with
17 Mr. Prilik?

18 **A.** Yes.

19 **Q.** All right. So, if we could, then, turn to Clip Eight,
20 which is page 16, line 21, to page 17, line 24.

21 (Audio clip played)

22 **BY MS. HAMILTON**

23 **Q.** I'd like to first turn your attention to page 17, line 3,
24 in which you say, "After all he sold them. Well, I don't know
25 for something. I don't know. I don't remember exactly, but

1 shall we say, well, in dollars, about around 1,800 bucks,
2 right?"

3 To whom are you referring when you said "he" sold them?

4 **A.** ITE.

5 **Q.** And you --

6 **A.** Ramzi.

7 **Q.** And on line 6 of page 17, you refer to -- you say, "around
8 1,800 bucks," right?

9 Why did you say that?

10 **A.** Because that was approximately an amount that Ramzi was
11 selling it for.

12 **Q.** To whom?

13 **A.** To TACOM.

14 **Q.** On page 18, line 6, Mr. Prilik says, "Well, let's examine
15 the possibilities."

16 So I'd like to walk through those possibilities with you
17 that Mr. Prilik refers to. Turning first to page 18, line 11,
18 Mr. Prilik said, "He has an option to refuse to deliver it. He
19 can't take it, because then he would destroy his entire
20 contract, because don't forget that the night vision is
21 approximately 25 percent from it all."

22 Did -- who did you understand Mr. Prilik was referring to
23 when he said "he," on line 11?

24 **A.** Again, ITE. Ramzi.

25 **Q.** And did you -- what did you understand, when Mr. Prilik

1 said, "an option to refuse to deliver it"?

2 **A.** Well, one of the options that Ramzi -- and this is in the
3 words of Prilik here. He's proposing that one of the options
4 that he could take: That he would make no deliveries or make
5 no money on a portion of night-vision goggles, but will make
6 some money on a portion by delivering weapons and communication
7 equipment.

8 **Q.** On page 18, line 18, Mr. Prilik said, "He has an option to
9 swallow it, and to rage, and to tell Dima how bad he is."

10 What was your understanding of the "it" that was referred
11 to by Mr. Prilik on line 18 to mean?

12 **A.** Price increase.

13 **Q.** And on line 19, who -- who was the "Dima" that Mr. Prilik
14 was referring to?

15 **A.** That's me.

16 **Q.** And then page 18, line 19, Mr. Prilik said, "He has an
17 option to turn around and run to Byron, run to Max, run to
18 Shmax, and run there to Yukos, Yunos, well, to all of the
19 others," to which you replied, on line 23, "Well, I
20 understand."

21 Were you familiar with the names that Mr. Prilik referred
22 to here?

23 **A.** Yes.

24 **Q.** How were you familiar with them?

25 **A.** Mr. Prilik here was making references to the other

1 night-vision suppliers. By "Ron" -- by -- Ron Harding is
2 principal of NiViSys.

3 Max, we already discussed, is principal at N-Vision.

4 And then Yukos. And Yukos -- that's just overtures to
5 different night-vision companies.

6 Q. When you say, "overtures to different night-vision
7 companies," what do you mean?

8 A. I think it's the brand names.

9 Q. Brand names for what?

10 A. For different than Newcon and ATN night vision.

11 Q. Did you understand that either of these companies sold
12 night-vision goggles?

13 A. Yes.

14 Q. Well, let's walk through each one, then, starting with
15 Byron. You said that was Byron Harding, from NiViSys. Is that
16 right?

17 A. Yes.

18 Q. Why did you believe that that was the reference that
19 Mr. Prilik was referring to: Byron Harding at NiViSys?

20 A. I didn't know any other Byron. And -- but I knew
21 Byron Harding.

22 Q. Now, in 2005, based on your knowledge of the industry of
23 night-vision goggles, did you believe that NiViSys was -- would
24 be able to supply a large volume of night-vision goggles
25 required in the Battalion Set II contract?

1 **A.** It was one of the possibilities.

2 **Q.** When you say, "one of the possibilities," what do you
3 mean?

4 **A.** At that time, in 2005, I believed it would be -- NiViSys
5 could theoretically supply, but highly unlikely, because they
6 were not yet a player in Generation II product out of Russia.

7 **Q.** There's -- Mr. Prilik then, on line 21, refers to "Max."
8 And you said you believed that to be a reference to the
9 proprietor of N-Vision. Is that right?

10 **A.** Yes.

11 **Q.** Why did you believe that?

12 **A.** I didn't know any other Maxes in the business.

13 **Q.** Now, in 2005 did you -- did you believe, based on your
14 market experience, that N-Vision was a viable option to supply
15 night-vision goggles for the Battalion Set II contract?

16 **A.** Yeah, theoretically, they could deliver, but not in -- not
17 practical.

18 **Q.** Why did you believe that?

19 **A.** N-Vision was a much smaller company, to my understanding.
20 And it needed -- you needed an experience working with Russian
21 suppliers, and financial capital to work on a contract with
22 this amount.

23 **Q.** And then Mr. Prilik referred to "Shmax." Did you
24 understand who that was?

25 **A.** I think that's just play on "Max." Just means to someone

1 else.

2 **Q.** Mr. Prilik then referred to -- on line 21, to Yukos. Were
3 you familiar with Yukos?

4 **A.** Not very much familiar, no; but my understanding was it
5 was just another night-vision manufacturer.

6 **Q.** In 2005 did you have enough information to make an opinion
7 as to whether or not Yukos could supply a large quantity of
8 night-vision goggles required in the Battalion Set II contract?

9 **A.** Well, since I wasn't even aware of them, I didn't believe
10 they were much of a player in that setting.

11 **Q.** Okay. And the final reference was to "Yunos," on page 18,
12 line 22. Who did you believe Yunos was?

13 **A.** I don't know. I think it was a reference to "Yukos";
14 similar to "Max" and "Shmax."

15 **Q.** Okay. After Mr. Prilik read through these companies --
16 various companies' names, on line 23, you said, "Well, I
17 understand."

18 Why did you say that?

19 **A.** Well, I was agreeing with him that, other than Newcon and
20 ATN, there would be probably not that many players that priced
21 well.

22 **Q.** On page 18, line 4, Mr. Prilik said, "If we were going to
23 hold our position firmly and the factories that manufacture the
24 IITs are going to hold their factories firmly accordingly, in
25 what will it end?"

1 What did you understand the word "position" to mean in
2 that; in Mr. Prilik's sentence that, "We're going to hold our
3 position" -- "If we're going to hold our position firmly"?

4 **A.** If we agree on the pricing of some sort, and then hold
5 that pricing level together, then that's what Mr. Prilik was
6 referring to in here.

7 **Q.** On -- and also on that -- on page 19, line 3, Mr. Prilik
8 asked, "In what will it end?"

9 And on line 4, it says, "In nothing."

10 What did you understand Mr. Prilik's reference to "it"
11 meant there, in, "In what will it end?"

12 **A.** Ramzi's possible looking for other suppliers than ATN and
13 Newcon.

14 **Q.** When Mr. Prilik said that it will end in nothing, did
15 you -- did you believe that he was accurate?

16 **A.** Yes.

17 **Q.** Why?

18 **A.** ATN and Newcon were best possible candidates to deliver in
19 that country.

20 **Q.** Now on page 19, line 9, Mr. Prilik said -- "And what
21 happens afterwards? Afterwards a new tender come comes out" --

22 Oh, I'm sorry. I jumped ahead. I apologize. On page 1,
23 line 9 -- line 1. Excuse me. I'm sorry. One minute. I
24 apologize.

25 So on page 19, beginning at line 6, Mr. Prilik said, "What

1 other options does he have? He has an option -- excuse me.
2 That's none of my damn business, but if he make money on Tommy
3 guns and radios, well, then he will move aside a little bit."

4 Did you -- did you -- what did you understand Mr. Prilik
5 meant when he said, "He will move aside a little bit"?

6 **A.** Well, that was one of the scenarios discussed. If the
7 price to ITE would be raised, he would absorb that price
8 increase.

9 **Q.** And when you say, "He would absorb" -- whom do you mean?

10 **A.** ITE.

11 **Q.** And did you believe that ATN might absorb a price increase
12 at that point in time, if one was instituted?

13 **A.** You mean ITE?

14 **Q.** I apologize.

15 Did you believe Mr. Prilik's statement was accurate?

16 **A.** No.

17 **Q.** Why not?

18 **A.** If the scenario that we're discussing here -- that he is
19 buying goggles at 1,800, and you offer it to him for 1,798, I
20 didn't believe that would be valuable, kind of, for prime to
21 continue delivering night-vision goggles, making \$2 per unit.

22 **MR. HOWDEN:** Your Honor, this is all speculation.

23 **THE COURT:** It sounds like it. I'm going to strike
24 the answer. So the answer's stricken, and you are to disregard
25 it.

MS. HAMILTON: Okay.

Q. And page 19, line 12, Mr. Prilik said, "Okay. Let's examine this further. The worst case he would say no, I don't want to. And what would happen? He simply wouldn't deliver in full, right," to which you reply, on line 16, "Yes."

And Mr. Prilik said, on line 17, "And the Americans would swallow it," to which you reply, on line 18, "Yes."

Here on line 17, when Mr. Prilik said, "and the Americans would swallow it," what did you refer -- what did you understand it to mean?

A. The fact that one of the scenarios, nondelivery on Battalion Set II, the TACOM would need to be dealing with the fact that Ramzi is unable to supply night-vision goggles. And they would need to swallow this, and continue buying them elsewhere.

Q. Did you tell Mr. Prilik that you were interested in his proposal?

A. Yes.

Q. Pardon?

A. I said that I'm willing to hear more, or something to that extent.

Q. Okay. So let's then turn to listen to page 20, line 1, through page 23, line 20.

(Audio clip played)

1 **BY MS. HAMILTON**

2 **Q.** Turning your attention to page 20, line 14, Mr. Prilik
3 said, "And I'll ask him preliminarily that and that which we'll
4 try to organize this is called an illegal antitrust."

5 To whom did you understand Mr. Prilik would be asking that
6 which we'll try to organize is called and illegal antitrust.

7 **A.** Michael Beker.

8 **Q.** And why did you believe that?

9 **A.** Because he just mentioned that he's going to contact him,
10 and he will need his approval to proceed.

11 **Q.** Now, on page -- excuse me. Line 8, Mr. Prilik said, "I'm
12 joking."

13 Did you understand Mr. Prilik to be joking?

14 **A.** No.

15 **Q.** Why not?

16 **A.** I think that was in response to my reaction when he
17 mentioned illegal antitrust. And I said, "Well." That "Well."

18 **Q.** Was there any other reason that you believed he was not
19 joking?

20 **A.** Yes. Because he continued on to discussing, and he was
21 talking later on about contacting Michael.

22 **Q.** So approximately how long did this conversation last?

23 **A.** This conversation -- I don't recall. About 20 minutes or
24 so, or a little over.

25 **Q.** And did you then subsequently speak with Mr. Prilik again?

1 **A.** Yes.

2 **Q.** And when was that?

3 **A.** Same day, very shortly after.

4 **Q.** And did you record that conversation?

5 **A.** Yes.

6 **Q.** I'm going to hand you what's been previously marked as
7 Exhibit 102. Do you recognize that?

8 **A.** Yes.

9 **Q.** What is it?

10 **A.** This is marked "Tape Number Two." And it's original
11 recording of the second conversation.

12 **Q.** And who made that recording?

13 **A.** I did.

14 **Q.** And have you listened to that recording?

15 **A.** Yes.

16 **Q.** And have you listened to the -- and did that recording
17 accurately reflect the conversation that you had with
18 Mr. Prilik?

19 **A.** Yes.

20 **Q.** And have you compared that audio-recording original to the
21 duplicate that the jury's hearing?

22 **A.** Yes.

23 **Q.** Are they the same?

24 **A.** Yes.

25 **MS. HAMILTON:** We'd move to admit, your Honor.

1 **MR. HOWDEN:** No objection, your Honor.

2 **THE COURT:** That's Exhibit 102?

3 **MS. HAMILTON:** Yes.

4 **THE COURT:** And then the transcription's what? Okay.
5 So that's 132, then, right?

6 **MS. HAMILTON:** Correct. The transcript is 132.

7 **THE COURT:** Okay. Okay.

8 (Trial Exhibit 102 received in evidence)

9 **MS. HAMILTON:** We're on our way to, hopefully, 132.

10 **Q.** So have you reviewed an English transcription of this
11 conversation?

12 **A.** Yes.

13 **Q.** And after reviewing it, did you -- and did you compare it
14 to the conversation that you had with Mr. Prilik?

15 **A.** Yes.

16 **Q.** And what -- did that English translation accurately
17 reflect the conversation that you had with Mr. Prilik?

18 **A.** Yes.

19 **MS. HAMILTON:** Move to admit Exhibit 132.

20 **THE COURT:** And 132 -- I understand there's no
21 objection, correct?

22 **MR. HOWDEN:** Correct.

23 **THE COURT:** And maybe we could find a way to do --
24 have a stipulation that that formality pertains to all of the
25 tapes that you've agreed to, and the transcripts, so we don't

1 have to go through this all of the time.

2 **MR. HOWDEN:** That would be fine, your Honor.

3 **THE COURT:** Okay. Thank you. Thank you.

4 (Trial Exhibit 132 received in evidence)

5 **THE COURT:** 132 and 102 are admitted.

6 **MS. HAMILTON:** Okay. So if we could play the
7 introduction to the recording before asking -- I ask you any
8 questions, that begins at page 1, line 1, through page 1, line
9 17.

10 (Audio clip played)

11 **BY MS. HAMILTON**

12 **Q.** On line 17, you say, "That was fast."

13 How soon after the first conversation ended with
14 Mr. Prilik did this conversation begin?

15 **A.** Arie called back very shortly after. I want to say 15, 20
16 minutes, or something.

17 **MS. HAMILTON:** If we could then play the next
18 portion, which is page three, line five, to page 6, line 17.

19 (Audio clip played)

20 **BY MS. HAMILTON**

21 **Q.** Now, if I can turn your attention to page 3, line 14,
22 Mr. Prilik said, "Yes, he is willing to talk and meet along the
23 lines of my proposal, or something close to it."

24 Did you understand who Mr. Prilik was referring to when --
25 on line 14, when he said "he is willing"?

1 **A.** Yes.

2 **Q.** And who was that?

3 **A.** Michael Beker.

4 **Q.** And why did you believe that to be the case?

5 **A.** Because previous conversation was left to where Arie had
6 to contact Michael.

7 **Q.** And Mr. Prilik then went on in this portion of the
8 conversation to say, "They're willing to talk and meet along
9 the lines of my proposal, or something close to it, but the
10 best thing to do, in order to make it specific, is perhaps for
11 Marc to get in touch with him."

12 Who did you understand "Marc" to mean?

13 **A.** Marc Morgovsky, CEO of ATN.

14 **Q.** And was -- what was -- what did you understand was to
15 occur between Mr. Marc Morgovsky and Mr. Beker, according to
16 Mr. Prilik?

17 **A.** Well, he was proposing a meeting of some sort between
18 Michael and Marc.

19 **Q.** And did -- did that meeting occur?

20 **A.** No.

21 **Q.** Why not?

22 **A.** Because I was the one who was working on this contract;
23 Marc wasn't. And Marc wasn't a part of the conversation with
24 Newcon.

25 **Q.** Mr. Prilik said at the end of this conversation that he

1 would -- he would let Mr. Beker know that -- to -- that, on
2 Monday, that you would tell him that -- he would tell Mr. Beker
3 that you'd be calling on Monday. Is that right?

4 **A.** Yes.

5 **Q.** And then did you subsequently have another conversation
6 with Mr. Prilik?

7 **A.** Yes.

8 **Q.** Or Mr. Beker after this conversation, August 29th -- 26th?
9 Excuse me.

10 **A.** Yes. I called the following Monday, on August the 29th.

11 **Q.** And did you record that conversation?

12 **A.** Yes.

13 **THE COURT:** Would this be a good place to perhaps
14 take a break? It is a little wearying.

15 Let's try to keep it to ten minutes, though, because
16 I think you're going to want a second break at some point. And
17 keep it to ten minutes. I know that doesn't give you a lot of
18 time, but we'll try to do that. Aim for ten minutes, please.

19 Follow the instructions you've been given about not
20 discussing the case with anyone else.

21 Do not discuss your testimony with any other persons
22 who may be witnesses. Thank you.

23 (Jury out at 10:17 a.m.)

24 **THE COURT:** Okay. So make a dash for it. Ten
25 minutes. Thank you.

1 (Whereupon there was a recess in the proceedings
2 from 10::18 a.m. until 10:37 a.m.)

3 (Jury in at 10:37 a.m.)

4 **THE COURT:** And you may continue.

5 **MS. HAMILTON:** Thank you, your Honor.

6 **BY MS. HAMILTON**

7 **Q.** Mr. Rocklin, we just started to talk about the first
8 conversation that you had with Mr. Prilik on August 29th.

9 **A.** Yes.

10 **Q.** Did you record that conversation?

11 **A.** Yes.

12 **Q.** And did you review an English translation of that
13 conversation?

14 **A.** Yes.

15 **Q.** And did the conversation, did it accurately reflect the
16 conversation -- did the recording reflect the conversation you
17 had with Mr. Prilik?

18 **A.** Yes.

19 **MS. HAMILTON:** So I move to admit tape number Exhibit
20 No. 103, your Honor.

21 **MR. OSTERHOUDT:** No objection.

22 **MR. HOWDEN:** No objection.

23 **THE COURT:** Admitted.

24 (Trial Exhibit 103 received
25 in evidence)

1 **BY MS. HAMILTON**

2 **Q.** And, also, you reviewed the English translation and it was
3 an accurate reflection of the conversation that you had with
4 Mr. Prilik on August 29th?

5 **A.** Yes.

6 **MS. HAMILTON:** So, your Honor, we move to admit
7 Exhibit No. 133.

8 **THE COURT:** 133 is admitted.

9 (Trial Exhibit 133 received
10 in evidence)

11 **BY MS. HAMILTON**

12 **Q.** And did you speak with Michael Beker on August 29th?

13 **A.** No.

14 **Q.** Did you speak with Mr. Prilik?

15 **A.** Yes.

16 **Q.** So let's now listen to the first clip, which is page 1,
17 line 13, to page 5, line 6.

18 (Audiotape played in open court.)

19 **Q.** Turning your attention to page 2, line 24. Mr. Beker --
20 excuse me, Mr. Prilik said: "He is trying to ascertain for
21 himself what to talk about, what constitutes the idea, what
22 constitutes the offer, what constitutes the request."

23 When Mr. Prilik referred to "he" was trying to ascertain
24 for himself what to talk about, who did you understand the "he"
25 to mean?

1 A. Michael Beker.

2 Q. You then on page 3, line 3 respond: "Well, the
3 requests... the ideas you gave them yourself, as they say."

4 Why did you say that?

5 A. Because in the past conversation, Arie was giving ideas of
6 some sort on what the business solutions to this contract would
7 be.

8 Q. So let's then play the remainder of this conversation,
9 which begins on page 5, line 7, and concludes on page 11, line
10 7.

11 (Audiotape played in open court.)

12 Q. Now, when, if ever, did you next hear from one of the
13 defendants?

14 A. Same day.

15 Q. And did you have a conversation with one of the
16 defendants?

17 A. Yes.

18 Q. And who was it?

19 A. Arie Prilik.

20 Q. Did you record that conversation?

21 A. Yes.

22 Q. Okay. Now, prior to your conversations with Mr. Prilik,
23 how did you hear from someone at Newcon?

24 A. Someone would just dial me directly or leave a message.

25 Q. On August 29th did you receive any type of message or

1 voicemail or some other form of communication from one of the
2 defendants?

3 **A.** Yes. I received a voicemail from Arie Prilik.

4 **Q.** And did you record that voicemail as well?

5 **A.** I believe so, yes.

6 **Q.** And did you record that voicemail on the same recording as
7 conversation number four?

8 **A.** Yes.

9 **Q.** Okay. And did the recording of conversation number four,
10 was it an accurate -- did it accurately reflect the
11 conversation you had with Mr. Prilik?

12 **A.** Yes.

13 **MS. HAMILTON:** Move to admit Exhibit No. 104, your
14 Honor.

15 **THE COURT:** 104, admitted. I hear no objection.

16 **MR. OSTERHOUDT:** No objection.

17 (Trial Exhibit 104 received
18 in evidence)

19 **MS. HAMILTON:** Thank you.

20 **BY MS. HAMILTON**

21 **Q.** And did you subsequently review an English translation of
22 that conversation you had with Mr. Prilik on August 29th at
23 3:00 o'clock?

24 **A.** Yes.

25 **Q.** And did that translation accurately reflect the

1 conversation you had with Mr. Prilik?

2 **A.** Yes.

3 **MS. HAMILTON:** Your Honor, I move to admit Exhibit
4 134, the English translation.

5 **MR. OSTERHOUDT:** No objection.

6 **THE COURT:** Hearing no objection, so 134 is admitted.

7 (Trial Exhibit 134 received
8 in evidence)

9 **MS. HAMILTON:** Thank you.

10 **BY MS. HAMILTON**

11 **Q.** So if we could play the first clip of the conversation,
12 which begins at page 1, line 13, through page 2, line 8.

13 (Audiotape played in open court.)

14 **Q.** What, if anything, did you do after receiving this
15 voicemail?

16 **A.** I returned the call.

17 **Q.** And did you speak with Mr. Prilik?

18 **A.** Yes.

19 **Q.** During the call, did Mr. Prilik discuss Mr. Beker?

20 **A.** Yes.

21 **Q.** Let's play the next clip starting at page 2, line 9,
22 through page 6, line 5.

23 (Audiotape played in open court.)

24 **Q.** If I could turn your attention, please, to page 3, line 8.

25 Mr. Prilik said: "The question arose if we think in the

1 direction of how, after all, not to let the Americans down --
2 not to let down the Americans, but indeed to finish... to
3 deliver what they need to them. Then what quantities and terms
4 were subscribed to."

5 To which you replied on line 16: "I've got it."

6 Why did you say, "I've have got it"?

7 **A.** I was continuing the conversation, understanding that for
8 next stage of working scenario Arie was asking for details,
9 units were remained to be delivered.

10 **Q.** Okay. And the reference to -- on line 13 to "quantities
11 and terms", what did you understand that was a reference to?

12 **A.** How many units remained to be delivered and when to be
13 delivered, what the delivery schedule was.

14 **Q.** What was the purpose in eliciting this information?

15 **A.** To -- again, to work out the working scenario for proposed
16 offer.

17 **Q.** Turning your attention now to page 6, line 1. Mr. Beker
18 says: "We are now September, October. He'd say it's a science
19 fiction."

20 Who did you understand Mr. Prilik was referring to when he
21 said "he'd say"? Who was the pronoun "he" was referring to
22 there?

23 **A.** I think Michael Beker.

24 **Q.** And then on page 6, line 2, Mr. Beker said: "But I think
25 this is here. They will accept that which they would be given.

1 There is no way about it."

2 Who did you understand "they" was in that sentence?

3 **A.** TACOM.

4 **Q.** And why did you believe Mr. Prilik was referring to TACOM?

5 **A.** Because this is what we're discussing here, the schedule.

6 And TACOM will take the schedule, whatever the schedule will
7 be.

8 **Q.** And on line 5 of page 6 you say: "Let's assume that."
9 Why did you say that?

10 **A.** Well, I don't think you can predict for sure what TACOM
11 will do. That's my response, so. I'm assuming the proposal,
12 whatever Prilik is proposing here.

13 **Q.** Now, in this section after discussing how many night
14 vision goggles were left to be delivered, did you and Mr.
15 Prilik discuss ITE's reaction from a possible switch from one
16 supplier to another?

17 **A.** Yes.

18 **Q.** Let's then listen to the next clip, which begins at
19 page 6, line 6, and continues to page 9, line 4.

20 (Audiotape played in open court.)

21 **Q.** All right. If we could turn your attention to page 6,
22 line 7?

23 Mr. Prilik asked: "And in your opinion... what in your
24 opinion will be the regard of the comrade from Jordan for any
25 proposed changes in the suppliers or models?"

1 To which you replied to page 10: "Well, for that we need
2 to agree on something, how exactly you wanna do it. You
3 understand?"

4 Why did you say that?

5 **A.** Arie at this point was looking for a scenario, and I was
6 asking him exactly how he was looking -- what the scenario he
7 was proposing.

8 **Q.** And on line 14 you then say: "I am sure you have all the
9 numbers, and whatever you proposed before we'll be in the same
10 realm, so to speak."

11 Why did you say that?

12 **A.** Because I was telling Arie that I had already all the
13 numbers of units to be delivered at that point, and prior to
14 that he also mentioned profit that ATN was making. So I was
15 referring to that numbers.

16 **Q.** After you referred to the numbers on page 6, line 24, Mr.
17 Prilik responded: "That is to say from your side, you
18 understand, that we... such prices... that which we discussed,
19 for us it is simply physically impossible, no way to claim into
20 it."

21 To which you replied on line 5: "Well, if that's what you
22 say."

23 Why did you say that, "If that's what you say?"

24 **A.** Because a number of times it was brought up that the
25 Newcon cost for night vision goggles was higher than ATN cost.

1 And, therefore, they couldn't supply the goggles at that price
2 level as ATN so the price had to be raised.

3 **Q.** On page 11, line 21 Mr. Prilik said: "But... but what it
4 boils down that in all likelihood it would be required from the
5 comrade from Jordan to raise the cost and very likely to change
6 the supplier and the model."

7 What did you understand "raise the cost" to mean in this
8 context?

9 **A.** That the cost of night vision goggles to be delivered on
10 Battalion Set II to ITE would need to be going up.

11 **Q.** Raise the cost to whom? I'm sorry.

12 **A.** To ITE in this specific instance.

13 **Q.** Mr. Prilik then goes on to say starting to line 23: "And
14 the question how well it's going to bond with him or this
15 comrade who is used to selling camels will say no, well, this
16 one... I know this model. And you can all go to hell."

17 To which you reply on line 4: "Well, he can be difficult,
18 that's why I told you that you can go anywhere hypothetically
19 above \$1,800 or even close to it, he will be forced to raise
20 the prices. And how it's going to play out further, I have no
21 idea."

22 First off, let's -- walking through some of your phrases,
23 sentences. You said, "Well, he can be difficult." To whom are
24 you referring?

25 **A.** President of ITE, Ramzi Abu-Taleb.

1 Q. And why did you say that Ramzi Abu-Taleb could be
2 difficult?

3 A. He was negotiating hard during the bidding process and he
4 would -- I am stating here that he would be very adamant to any
5 price increase, and to retain the profit that he would -- was
6 making by buying the units from ATN, he would be forced to
7 raise the prices to TACOM.

8 Q. Turning your attention then to page 8, line 10. Mr.
9 Prilik said: "The question is whether we would prefer to work
10 with a little profit or without profit and to save his
11 contract, or if he would prefer to put a big pile of crap on
12 the TACOM and not deliver in its entirety."

13 To which you reply on line 16: "Well, this is, as they
14 said, dangerous game."

15 Why did you say that?

16 A. Because it was highly unlikely that ITE would work with
17 little profit. And then the second scenario, that he would not
18 deliver the units, so then the contract would go back on the
19 bidding process.

20 Q. Now, you previously -- you just a moment ago said that ITE
21 was negotiating hard during the bidding process. What did you
22 mean by "negotiating hard"?

23 A. As a prime, they were looking for the best delivery terms,
24 best price, best warranty and best payment terms.

25 Q. After you and Mr. Prilik discussed the subject of -- of

1 Ramzi's reaction to a change in supplier, did the subject of
2 Mr. Beker come up again in this conversation?

3 **A.** Yes.

4 **Q.** All right. Let's listen to page 9, line 5, to page 11,
5 line 24.

6 (Audiotape played in open court.)

7 **Q.** Now, I want to turn your attention to page 10, line 21.
8 Mr. Prilik asked: "Will it play a role if the TACOM presented
9 the LC for the comrade from Jordan who reassigned it to you...
10 and afterwards it should be reassigned."

11 What did you understand the reference to "LC" on line 22
12 to mean?

13 **A.** It was a reference to letter of credit.

14 **Q.** And when Mr. Prilik asked, "Would it play a role if the
15 TACOM presented a letter of credit for the comrade from Jordan
16 who reassigned it to you," how does a letter of credit work in
17 the context that Mr. Prilik was speaking here?

18 **A.** Letter of credit is a payment instrument in which one
19 entity would usually deliver product or the services and
20 another entity would go to the bank, secure the funds, and then
21 on some condition payment would be released to whoever is
22 delivering goods or services.

23 And in this instance there is also a possibility where a
24 payment, a letter of credit can be transferred. So, let's say,
25 TACOM would open the letter of credit to ITE and then ITE would

1 be transferring a letter of credit to ATN. But this was not
2 the case, so I'm stating it there.

3 Q. When you say "this was not the case," what do you mean?

4 A. There was not a letter of credit and Ramzi was paying to
5 us directly without the letter of credit.

6 Q. Now, on page 9, line 5, just Mr. Prilik says: "Seriously,
7 I with him will come to the bottom of this matter and then
8 tomorrow... either tomorrow or the day after tomorrow, he will
9 already call."

10 Who did you believe Mr. Prilik was referring to when he
11 said "him" on line 5?

12 A. Michael Beker.

13 Q. And did you subsequently speak with Mr. Beker?

14 A. Yes.

15 Q. And when was that?

16 A. Next day.

17 Q. How did you come to speak with Mr. Beker?

18 A. I think Arie made a call and connected us.

19 Q. And did you record the telephone conversation with Mr.
20 Prilik and then Mr. Beker?

21 A. Yes.

22 Q. And does that -- have you reviewed that recording?

23 A. Yes.

24 Q. And does it accurately reflect the conversation that you
25 had with Mr. Prilik and then Mr. Beker?

1 **A.** Yes.

2 **MS. HAMILTON:** Your Honor, I would move to admit
3 Exhibit 105, the recording of the fifth conversation into
4 evidence.

5 **THE COURT:** 105? Admitted.

6 (Trial Exhibit 105 received
7 in evidence)

8 **MS. HAMILTON:** Thank you.

9 **BY MS. HAMILTON**

10 **Q.** Did you subsequently review an English translation of the
11 conversation you had with Mr. Prilik and then Mr. Beker on
12 August 30th?

13 **A.** Yes.

14 **Q.** And was the English translation accurate, an accurate
15 reflection of your conversation with Mr. Prilik and Mr. Beker
16 on August 30th?

17 **A.** Yes.

18 **MS. HAMILTON:** Your Honor, I move to admit Exhibit
19 135, which is the English translation of the fifth conversation
20 into evidence.

21 **THE COURT:** And no objection? 135 is admitted.

22 (Trial Exhibit 135 received
23 in evidence)

24 **MS. HAMILTON:** Thank you.

25

1 **BY MS. HAMILTON**

2 **Q.** Okay. You spoke with Mr. Prilik first that day, you said?

3 **A.** Yes.

4 **Q.** Let's turn to the conversation and begin listening. So
5 beginning on page 2, line 5 -- line 5, through page 2, line 22.

6 (Audiotape played in open court.)

7 **Q.** Mr. Prilik said he would transfer the telephone
8 conversation. Did you then speak with Mr. Beker?

9 **A.** Yes.

10 **Q.** Let's -- and then did Mr. Beker speak about Mr. Prilik at
11 all?

12 **A.** Yes.

13 **Q.** Let's turn to page 2, line 24, through page 5, line 5 and
14 listen to that segment.

15 (Audiotape played in open court.)

16 **Q.** If I could turn your attention to page 5, line 2, Mr.
17 Beker said: "I can say... like now we are talking and you are
18 talking with the primary source. That is to say, there is no
19 longer any sense in duplicating it."

20 To which you replied on line 5, "I've got it. Well,
21 that's why."

22 Why did you reply, "I've got it"?

23 **A.** I understood at that moment that Arie was communicating to
24 Michael, Michael was communicating to Arie, and he was the
25 primary source of negotiation and I should have -- I can

1 discuss everything further with him.

2 **Q.** The "he" was the primary source, to whom are you
3 referring?

4 **A.** Michael Beker.

5 **Q.** We can then play the next portion, which is page 5, line
6 6, page 9, line 17.

7 (Audiotape played in open court.)

8 **Q.** Okay. I would turn your attention to page 5, line 10.
9 Mr. Beker said: "The customs is closed. The shipping is not
10 possible. From this side, like all the problems are known to
11 me as well. Well, I wouldn't say 100 percent, but 90."

12 When Mr. Beker referred on line 11 to "this side," what
13 did you understand that to mean?

14 **A.** My understanding, that was a reference to TACOM, that
15 pressure was applied to TACOM in regard to the performance on
16 this contract.

17 **Q.** And on line 10 Mr. Beker refers to the "customs is
18 closed." What did you understand the reference to "customs" to
19 mean there?

20 **A.** The customs in Russia seized this shipment from our
21 supplier.

22 **Q.** On page 6, line 10 you say -- excuse me. First, page 6,
23 line 2, Mr. Beker said: "I have two ways, as it were. The
24 first is to continue working like I have been working and to
25 wait and see how it will all end, right?"

1 And on page 6, line 10 you say: "Yes, but with us it
2 could also somehow... could get resolved."

3 Why did you say that?

4 **A.** I was giving an indication that we would keep working on
5 the contract, that we want to perform and deliver on the
6 contract.

7 **Q.** Moving down to line 15, on page 6, Mr. Beker said: "Maybe
8 you are hoping, shall we say, to resolve the matter by way
9 of... well, shall we say a Belarussian-Ukrainian cooperation."

10 At the time that ATN's supplier in Russia began to
11 experience difficulties, did ATN look for other sources to
12 obtain night vision goggles to supply under the Battalion
13 Set II contract?

14 **A.** Yes.

15 **Q.** And where was those companies located?

16 **A.** One company was in Belarussia and the second one was in
17 the Ukraine.

18 **Q.** And what was the name of the Belarussian company?

19 **A.** Belamo.

20 **Q.** And do you recall the name of the Ukrainian company?

21 **A.** Sphera.

22 **Q.** Did ATN use night vision goggles from either one of these
23 companies to fulfill its obligations under the Battalion Set II
24 contract?

25 **A.** Yes.

1 **Q.** Now, before turning to the next segment, I just want to
2 ask how, if at all, during this conversation did Mr. Beker
3 refer to the Battalion Set II contract?

4 **A.** As "the contract" or "contract."

5 **Q.** Then let's listen to Mr. Beker starting at page 9, line
6 18 --

7 **MR. HOWDEN:** Your Honor, with respect to that last
8 answer, I don't think there is any foundation for that. It's
9 speculation. We're talking about two contracts in this case.

10 **THE COURT:** Can you lay a foundation for that?

11 **MS. HAMILTON:** We will play the next section and I
12 will lay it then, your Honor.

13 **THE COURT:** And how do you spell what you were
14 saying? Because I didn't understand it. It sounded like --
15 did you say "contractor" or was it some other word?

16 **THE WITNESS:** No, the contract or --

17 **THE COURT:** How do you spell that?

18 **THE WITNESS:** C-o-n-t-r-a-c-t.

19 **MS. HAMILTON:** The contract.

20 **THE COURT:** Oh, contract. Okay.

21 **THE WITNESS:** Yeah.

22 **THE COURT:** It sounded like the name --

23 **THE WITNESS:** No, no, no.

24 **THE COURT:** It sounded differently to me. Just
25 thought I -- sorry about that.

1 **THE WITNESS:** We just didn't refer to the Battalion
2 Set II, we just referred to it as "the contract."

3 **THE COURT:** Contract, okay. Okay.

4 **MR. HOWDEN:** Well, there is a subcontract. It's not
5 the Battalion Set II contract, which we --

6 **THE COURT:** You can go into it on cross-examination,
7 how is that?

8 **MR. HOWDEN:** Thank you.

9 **THE COURT:** Thank you.

10 **BY MS. HAMILTON**

11 **Q.** All right. If we could turn and play page 9, line 18, to
12 page 13, line 19.

13 (Audiotape played in open court.)

14 **Q.** Okay. If I could turn your attention to page 10, line 11.
15 Mr. Beker said: "But the fact speaks for itself. Well, people
16 came over and offered cheap prices and stole it."

17 First of all, what did you understand the reference to
18 "it" to mean, "stole it," on line 12?

19 **A.** Battalion Set II contract.

20 **Q.** And Mr. Beker's reference to "people" that came over on
21 line 11, what did you understand who the "people" to mean?

22 **A.** ATN.

23 **Q.** On page 10, line 17 Mr. Prilik -- Mr. Beker said: "If you
24 had fit in a normal price niche, I wouldn't have said a single
25 word to you. Kudos to you, as they say, but unfortunately the

1 Jordanian guy took us all. And, well... and that's it.

2 Nothing else. I am without any..."

3 And then it goes on. But what I want to ask you is on
4 line 17 Mr. Beker said: "If you had fit in a normal price
5 niche." In this conversation did you ask Mr. Beker what he
6 meant by "normal price niche"?

7 **A.** I think we discussed this. I don't remember right now.

8 **Q.** What did you understand Mr. Beker meant when he said "if
9 you fit in a normal price niche"?

10 **A.** That ATN offered the product for very low pricing that
11 allowed prime ITE to make very large, unfair profits.

12 **Q.** On page 10, line 23 Mr. Beker said: "That because for
13 this money it is impossible to receive the product. Well, and
14 not to mention to sell it."

15 What did you understand the reference for "this money" to
16 mean on line 23 at page 10?

17 **A.** For the price that ATN was selling to ITE, Newcon was
18 unable to even buy the product for that money.

19 **Q.** And what price was ATN selling its night vision goggles to
20 ITE?

21 **A.** \$1,277.

22 **Q.** So was it impossible for ATN to buy night vision goggles
23 at the price Beker was referring to?

24 **A.** No.

25 **Q.** Was it impossible for ATN to sell night vision goggles at

1 that price?

2 **A.** No.

3 **Q.** Okay. And moving on. Did Mr. Beker provide his opinion
4 on ITE's chances of being awarded phase two and three of the
5 Battalion Set II contract?

6 **A.** Yes.

7 **Q.** And did he explain what he thought would happen to phase
8 two and phase three of that contract?

9 **A.** Yes.

10 **Q.** Let's turn to page 13, line 21 to page 16, line 8.

11 (Audiotape played in open court.)

12 **Q.** If you could please turn your attention to page 14,
13 line 7. Mr. Beker said: "It's 100 percent that they said that
14 there would be no... no renewal of the contract for the
15 Jordanian guy."

16 On line 8 Mr. Beker refers to "they" said that. What --
17 who did you understand Mr. Beker was referring to?

18 **A.** TACOM.

19 **Q.** And the reference on page 9 -- excuse me, line 9 that
20 there would be "no renewal of the contract," what contract did
21 you understand Mr. Beker was referring to?

22 **A.** Battalion Set II. More specifically phases two and three.

23 **Q.** Staying on page 14 then, going to line 18, Mr. Beker said:
24 "Either it will be given already automatically like to the
25 company that proved its worth and accomplished the first part,

1 okay?"

2 Before I move on, I just want to ask you a couple
3 questions about this. Did you understand who the company -- on
4 line 19 "the company that proved its worth," who did you
5 understand the company to be in this context?

6 **A.** Newcon.

7 **Q.** And what did you understand the reference to "accomplish
8 the first part" to mean?

9 **A.** It was a reference to Battalion Set I where Newcon was
10 delivering night vision goggles.

11 **Q.** Why did you believe that was the -- what was being
12 referred to here?

13 **A.** Because that's the scenario we're discussing here.

14 **Q.** On page 14, line 20 Mr. Beker said after referring to they
15 would automatically -- given automatically to the company that
16 proved its worth, then said on line 20: "Or they will bring it
17 as the last resort to the tender, where we have all the chances
18 of winning. Let's put it this the way. Well, such are, from
19 my point of view... well, I, as it were... told you in plain
20 language, without, without ah... without hiding anything...
21 like, great. Nothing grand... nothing hidden."

22 To which you replied on page 15, line 4, "Well, it's
23 clear".

24 Why did you say that?

25 **A.** Well, I understood the two proposed scenarios that Mr.

1 Beker was proposing here; that the one scenario would be that
2 if ATN does not perform, then the contract would be just given
3 to Newcon.

4 And the second scenario is if ATN does not perform,
5 contract is going to go back on the bidding process and then
6 would be most likely awarded to Newcon.

7 **Q.** Did Mr. Beker discuss what he believed to be the situation
8 with ATN suppliers in Russia?

9 **A.** Yes.

10 **Q.** Okay. Let's listen to page 16, line 9, through page 18,
11 line 18.

12 (Audiotape played in open court.)

13 **Q.** So that was page 16, line 9, through page 18, line 18.
14 Let's go ahead and just play the next clip, page 18, line 18,
15 through page 18, line 23.

16 (Audiotape played in open court.)

17 **Q.** And did Mr. Beker continue to discuss his perceptions of
18 the activities in Russia?

19 **A.** Yes.

20 **Q.** All right. Then let's go ahead and play page 19, line 24,
21 through page 22, line 24.

22 (Audiotape played in open court.)

23 **Q.** Now, and during this August 30th conversation with Mr.
24 Beker, was the subject of ITE discussed again?

25 **A.** Yes.

1 Q. Let's turn to page 23, line 1, through page 27, line 8,
2 please.

3 (Audiotape played in open court.)

4 Q. Okay. If we could turn your attention to page 24, line
5 11, please. Mr. Beker said: "That is... that is, say, for
6 some reason it seems to me that now you should worry. At this
7 point not so much about the execution of this contract, pardon
8 me for saying so, as for your ass to remain with its whole
9 skin."

10 You then reply: "Well, we have... well, naturally you,
11 yourself, understand only too well. We are exposed."

12 Why did you say that?

13 A. Because I understood what Mr. Beker was implying here,
14 that have we not deliver the remainder of the goggles for
15 Battalion Set II, we would be exposed as a company for illegal
16 actions by ITE against ATN.

17 Q. On page 26, line 10 you say: "And for how much he'll sue
18 us; he is the only one who knows this, right?"

19 Who were you refusing to when you said "he" in that
20 sentence?

21 A. I was referring to ITE president Ramzi Abu-Taleb.

22 Q. Why did you say, "And for how much he'll sue us. He is
23 the only one that knows this, right"?

24 A. Because that was the discussion here, was a possible
25 liability by ATN to ITE and he could sue us for whatever he

1 would decide to sue us for.

2 **Q.** Mr. Beker then replied on line 12: "Yes, but if you're
3 going to involve... precisely from the point of view of force
4 majeure, that it doesn't depend on you. If... I hope that you
5 have this in the contract, the force majeure circumstances, and
6 this has to do with the Russian authorities that you are unable
7 to control."

8 Are you familiar with the term "force majeure"?

9 **A.** Yes.

10 **Q.** What does it mean to you?

11 **A.** It's a common clause in the business contracts where one
12 of the parties would be protected for non-performance based on
13 the acts that are above and beyond the influence of that party;
14 for example, wars, influenced by government. I don't know,
15 revolutions, acts of God and so on and so forth.

16 **Q.** Have you seen those clauses in business contracts ATN has
17 used?

18 **A.** Yes.

19 **Q.** Now, I would like to turn and play from page 27, line 9,
20 to page 34, line 22.

21 (Audiotape played in open court.)

22 **Q.** During this conversation, did Mr. Beker discuss supplying
23 night vision goggles to ITE?

24 **A.** Yes.

25 **Q.** Let's then listen to page 35, line 1, to page 39, line 14.

1 (Audiotape played in open court.)

2 Q. If you would turn your attention to page 36, line 12. Mr.
3 Beker said: "I 99 percent don't want to sell it to him."

4 Who did you understand the him was that Mr. Beker was
5 referring to there?

6 A. Ramzi Abu-Taleb, president of ITE.

7 Q. And then on page 37, line 18. Mr. Beker says: "I don't
8 trust him. And in addition, why should I go with him if we
9 have a strategic structure with Anham that can implement this
10 contract."

11 At this time what, if anything, did you believe was
12 Newcon's relationship with Anham?

13 A. Newcon was a subcontractor for Battalion Set I and they
14 delivered under battalion Set I the night vision goggle portion
15 of it.

16 Q. What, if any, other understanding did you have about the
17 relationship between Newcon and Anham?

18 A. If the second battalion set would be up for grabs, as
19 we're discussing here, and would be awarded to -- for phases
20 two and three to Anham, then Newcon would be delivering the
21 night vision goggle part.

22 Q. What led to your understanding on that part?

23 A. Because Mr. Beker here states this.

24 Q. Now, was Mr. Prilik discussed during this conversation?

25 A. Yes.

1 Q. Let's then play page 39, line 15, through page 42, line
2 12.

3 (Audiotape played in open court.)

4 Q. If you would turn your attention to page 40, line 15.

5 Mr. Beker said: "And he wants to see, as it were.... ah, is
6 the end result of this, but unfortunately I can only hear out
7 his ideas, conversations, but... well whether to accept them or
8 not to accept them. I know, ah, his suggestions as well, shall
9 we say, but..."

10 Who did you understand Mr. Beker was referring to in that
11 passage?

12 A. Arie. Arie Prilik.

13 Q. And continuing at line 20 on page 40: "I'm also all for,
14 ah, I... I... I don't understand the main point for now. I
15 don't understand what platform we can, like, combine our
16 ambitions. This is what I don't understand for now, in the big
17 picture. We... well, as it were competitors after all."

18 To which you reply on page 41, line 2: "That's a fact."

19 Why did you say that?

20 A. I was agreeing with Michael that we were competitors.

21 Q. Mr. Beker refers to you as Dimochka.

22 A. Yes.

23 Q. Does that have some particular -- when is the word -- your
24 name, when are you called that name? Under what circumstances?

25 A. Usually that's how parents would address their children.

1 Q. Now, did Mr. Beker discuss any other companies besides ITE
2 and ATN during this conversation?

3 A. Yes.

4 Q. Let's listen to page 44, line 8, to page 45, line 10.

5 (Audiotape played in open court.)

6 Q. If you could turn your attention first to page 44, line
7 11.

8 THE COURT: Before you do that, I don't know
9 whether -- does the jury have access to this or will they have
10 access to the written transcripts?

11 MS. HAMILTON: Yes, your Honor. We anticipate giving
12 it with redactions at the end.

13 THE COURT: Okay, okay. So there are redactions.
14 And I gather from my understanding of what's been agreed to
15 that the redactions should not concern the jury.

16 In other words, there will be big black lines
17 omitting certain things because, in fact, all the parties agree
18 that what has been redacted or blackened out is not relevant to
19 the proceedings here. There may have been some personal
20 conversation or something else, whatever it was, but it's not
21 relevant to what's involved here.

22 Is that correct?

23 MS. HAMILTON: Yes, your Honor.

24 MR. HOWDEN: That's correct, your Honor.

25

1 **THE COURT:** Okay. Okay.

2 **BY MS. HAMILTON**

3 **Q.** So Mr. Beker says, starting on line 10: "We work very
4 closely with DEP Photonis and we work with representatives of
5 the ITT. We also work with... eh, Inside Technology."

6 Are you familiar with DEP Photonis?

7 **A.** Yes.

8 **Q.** How do you know that, DEP Photonis?

9 **THE COURT:** We talked about that earlier, didn't we?

10 **MS. HAMILTON:** Yes.

11 **THE COURT:** So that particular company.

12 **MS. HAMILTON:** I was kind of saying in this stage.

13 It's been awhile and there has been a lot of conversations
14 since then.

15 **BY MS. HAMILTON**

16 **Q.** So in 2005 what product did DEP Photonis say?

17 **A.** Generation II image intensifier tubes, among other
18 products.

19 **Q.** Was there any other generation technology that was sold by
20 DEP Photonis?

21 **A.** No.

22 **Q.** Only Generation II?

23 **A.** Yes.

24 **Q.** Next reference is on line 11 to "representatives of the
25 ITT." In 2005 did you have an understanding of who ITT was?

1 **A.** Yes.

2 **Q.** And who was it?

3 **A.** U.S. largest producer of Generation III.

4 **Q.** I'm sorry. Generation III what?

5 **A.** Image intensifier tubes and the full systems.

6 **Q.** And there's also on line 12, Mr. Beker references Inside
7 Technology. In 2005 were you familiar with this, with Inside
8 Technology?

9 **A.** Yes.

10 **Q.** And how were you familiar with Inside Technology?

11 **A.** Inside Technology was the company that manufactured
12 complete systems Generation III.

13 **Q.** And when you say "complete systems," what does that mean?

14 **A.** Fully functioning units, like night vision goggles and
15 stuff like that. And they are also manufactured non-core
16 technology bodies.

17 **Q.** Now, on page 44, line 15, Mr. Beker said: "That is to
18 say... excuse me. Discuss the question of whether or not they
19 are going... Or not going - one way or the other - to
20 participate."

21 What did you understand the phrase "participate" to mean
22 in this context.

23 **A.** How these competitors would participate in any given
24 bidding process for night vision.

25 **Q.** Mr. Beker then says, beginning on line 15: "That is to

1 say... what we'll now be talking about, no, don't participate.

2 We'll give you a payment to step back. For what?"

3 **A.** He is --

4 **Q.** I --

5 **A.** I thought for what? Okay.

6 **Q.** "For what" is actually one of the statements Mr. Beker
7 makes.

8 Did you understand to whom Mr. Beker was referring when he
9 said you, "We'll give you a payment to step back?"

10 **A.** Yes.

11 **Q.** And who did you understand him to be referring to?

12 **A.** ATN.

13 **Q.** And what did you understand the payment to give you a
14 payment to step back to mean?

15 **A.** Taking cooperation between competitors to the next level.
16 So that's a payment to ATN for not performing for the remainder
17 of Battalion Set II contract.

18 **Q.** And who did you understand would make that payment to ATN?

19 **A.** Newcon.

20 **Q.** Beginning on page 44, line 18 you say: "No. Well, I
21 understand this is..."

22 And then on line 21 say, "This is your business decision,
23 as they say."

24 Why did you say that?

25 **A.** Because to make a decision to pay ATN for not performing

1 on a contract, that would be a business decision for Newcon to
2 make.

3 **Q.** Now, turn to -- so would that discussion with -- did the
4 discussion with Mr. Beker continue?

5 **A.** Yes.

6 **Q.** And let's go ahead and than play page 45, line 11, to page
7 47, line 3.

8 (Audiotape played in open court.) is

9 **Q.** Let's go ahead and play the next clip then, page 47,
10 line 4, through 48, line 15.

11 (Audiotape played in open court.)

12 **Q.** Turn your attention to page 47, line 6 -- or line 5. Mr.
13 Beker says: "Is ATN going to be by that time up shit creek or
14 next to us in some... well... well, I don't know, a consolation
15 prize or just next to us, or indeed to give some serious
16 thought as to how we should live subsequently together or a
17 part or, that is to say, it is even hard for me now, to phrase
18 it."

19 And on line 12 you say: "And what consolation prize could
20 there be?"

21 Why did you ask that question?

22 **A.** My understanding was this is where the pay out of some
23 sort was offered, some sort of consolation prize and I wanted
24 to know how much was offered.

25 **Q.** What did you understand the reference to "consolation" to

1 mean in this setting, in this context?

2 **A.** Well, that would be some sort of payment for ATN to do
3 something, some sort of payment from Newcon.

4 **Q.** Let's then play -- well, let's go ahead and play the next
5 clip, which is page 49, line 5, through 50, line 2. Is that
6 right?

7 I'm sorry. 48, line 16 through 49, line 8.

8 (Audiotape played in open court.)

9 **Q.** Let's go ahead and play the next clip, 49, line 5, to 50,
10 line 2.

11 (Audiotape played in open court.)

12 **Q.** Okay. On page 49, line 5, Mr. Beker said: "That is to
13 say, there is another scenario. For instance, this. To take a
14 stand together against Ramzi. Well, it's a for instance."

15 What did you understand this scenario "to take a stand
16 against Ramzi," how that would work?

17 **A.** Well, that was proposed scenario, ATN would propose a
18 price increase or non-delivery of the units, rather, for the
19 remainder of Battalion Set II phase one and would recommend
20 purchasing these units, remainder of the units from Newcon.

21 **MR. HOWDEN:** This really is speculation.

22 **THE COURT:** It's beginning to sound like that. Why
23 don't we just stop at the last sentence and then pick it up
24 with another question?

25 **MS. HAMILTON:** Okay.

1 **BY MS. HAMILTON**

2 **Q.** On page 49, line 12, Mr. Beker says: "We can no longer
3 deliver. You can go to Newcon."

4 Mr. Beker said, "We can no longer deliver," who was the
5 "we" that you understood he was referring to there?

6 **A.** ATN.

7 **Q.** And when -- then ATN could no longer deliver -- to whom
8 was this statement -- did you understand who Mr. Beker was
9 making or suggesting this statement be made to?

10 **A.** That ATN would make the statement to ITE.

11 **THE COURT:** While you are asking for explanations,
12 since it's in here and it's been -- and it's been played, could
13 you ask him about page 48, line 16 and what he understood was
14 meant by that statement by Mr. Beker?

15 **MS. HAMILTON:** Page 48, line 16.

16 **THE COURT:** 16, 17.

17 **MS. HAMILTON:** Sure.

18 **THE COURT:** Because it seems somewhat inexplicable.
19 Maybe he understands it.

20 **MS. HAMILTON:** Okay.

21 **BY MS. HAMILTON**

22 **Q.** If we could -- if you could pull up page 48, please? And
23 then highlight line 16 through 24.

24 (Document displayed)

25 **Q.** Mr. Beker said: "Well, let's put it this way... you

1 should have bought Newcon, it would have been better."

2 What did you understand Mr. Beker was referring to?

3 **A.** There is a reference being made that -- you see that it
4 would be better if ATN would buy Newcon. One company would buy
5 another one. And he's referring to many years in the past at
6 one of the trade shows, 15 years prior to that or so, it was
7 rumored that ATN might buy Newcon.

8 **Q.** And then Mr. Beker said on page 48, line 22: "When I
9 first said it about 15 years ago, I don't remember... there was
10 such... or how many. There was such turmoil there."

11 What did you understand Mr. Beker to refer to when he
12 said, "When I first said it." What was the "it" he was
13 referring to?

14 **A.** The fact that the rumor that ATN would buy Newcon was, I
15 think, instigated by Mr. Beker. And when I first mentioned
16 that, it was a lot of talk at that trade show.

17 **Q.** And were there ever discussions about ATN purchasing
18 Newcon?

19 **A.** No.

20 **Q.** That you are aware of?

21 **A.** That I'm aware of, no.

22 **THE WITNESS:** If it would be okay, can we take a
23 break?

24 **THE COURT:** Probably the jury would like that also.
25 Why don't we do this? Rather than take a full-on break -- this

1 is tedious, I know.

2 You go ahead. Go ahead. Don't discuss your
3 testimony with any other witnesses. You know that rule.

4 (Witness steps down.)

5 **THE COURT:** So if any of you want to just go back and
6 use the restroom or you want to stand up, you can do that. But
7 you can stay here, that's fine, too, and just stretch. There
8 you go. We should have a period of calisthenics I guess.

9 (Whereupon there was a brief
10 recess in the proceedings.)

11 **THE COURT:** Ms. Hamilton?

12 **MS. HAMILTON:** Thank you, your Honor.

13 **BY MS. HAMILTON**

14 **Q.** I would like to ask you some questions of Mr. Beker's
15 statements of another scenario, "to take a stand together
16 against Ramzi," which is on page 49, line 5.

17 If we could pull up all of page 49?

18 (Document displayed)

19 **Q.** Starting at line 10 -- can you actually pull up the page
20 from the transcript? Thanks.

21 (Document displayed)

22 **Q.** Mr. Beker says: "Well, due to these circumstances that we
23 have, you can go fuck yourself."

24 What circumstances did you understand Mr. Beker was
25 referring to there?

1 **A.** That ATN would not deliver -- ATN would go and tell Ramzi
2 that that they no longer will deliver product for the remainder
3 of phase one of Battalion Set II, and then tell him to buy the
4 product from Newcon, and Newcon would tell him that they will
5 not sell it.

6 **Q.** Let's then -- so the next part of the conversation that
7 occurred, let's play that piece, which is page 50, line 3, page
8 51 -- through page 51, line 3.

9 (Audiotape played in open court.)

10 **Q.** And then the next part of the conversation on page 51,
11 line 4, through page 52, line 9.

12 (Audiotape played in open court.)

13 **Q.** Okay. If I could turn your attention to page 51, line 7,
14 Mr. Beker said: "It can be deliberated. It can be discussed.
15 One could give some thought as to what angle, you know, the
16 internal, you can set up for Ramzi. Turning to... if there are
17 premises to this, that is to say one can... one can look at
18 this at the angle of that."

19 Let me ask about that section first. When Mr. Beker said,
20 "One could give some thought as to what angle, you know, the
21 internal, you can set up for Ramzi," what did you understand
22 him to mean?

23 **A.** In the past conversation we discussed on how to limit
24 ATN's liability in front of ITE, and this is how to limit
25 liability in front of TACOM. So we could turn to TACOM and

1 tell him that ATN is not going to perform on the remainder of
2 Battalion Set II because Ramzi isn't paying.

3 Q. And let me get to that section. So on page 51, line 11,
4 Mr. Beker said: "He, well, doesn't pay regularly."

5 Who did you understand that Mr. Beker was referring to
6 when he said "he"?

7 A. Ramzi.

8 Q. And was that true? Was -- was ITE not paying ATN
9 regularly?

10 A. That wasn't true. They were paying on time.

11 Q. On line 12 Mr. Beker said: "He no longer can be trusted?"
12 Again, who is the "he" referred to there?

13 A. Again, Ramzi with ITE.

14 Q. And was that true, that ITE could no longer be trusted by
15 ATN?

16 A. No.

17 Q. And on page 51, line 12 Mr. Beker said: "We no longer
18 want to supply through him." And what did you understand that
19 sentence to mean?

20 A. That that would be something that ATN would state to
21 TACOM; that ATN is no longer want to deliver the goggles
22 through ITE because he is not paying for it.

23 Q. And was that true?

24 A. No.

25 Q. What purpose did you understand there was in providing

1 these reasons to TACOM?

2 **A.** To make this working scenario for ATN. If ATN limits the
3 liability in front of TACOM, if ATN limits liability in front
4 of ITE, ATN has a better reason not to perform.

5 **Q.** Did -- was Ramzi of ITE discussed in the next portion of
6 the conversation?

7 **A.** Yes.

8 **Q.** Let's turn, then, to page 52, line 10, through page 54,
9 line 16.

10 (Audiotape played in open court.)

11 **Q.** So if you would turn your attention to page 53, line 2,
12 Mr. Beker said: "Yes, yes, but Ramzi, I think... that if you
13 guys present well my idea... in the form of force majeure."

14 And then going on to line 5: "In what probably... in what
15 we probably also could... on our part, organize this... As it
16 were... paper, if you guys couldn't organize it from Russian
17 authorities."

18 What did you understand was the paper Mr. Beker was
19 referring to there on page -- on line 6?

20 **A.** Some sort of document from Russian customs that would go
21 into the -- again, protecting possibly ATN against ITE, against
22 some legal actions from ITE stating that ATN is unable to
23 deliver the product because of the action of Russian customs.

24 **Q.** And Mr. Beker refers to on page 53, line 7 to the term,
25 "if you guys could organize it." What did you understand the

1 phrase "organize it" to mean in this context?

2 **A.** Get the paper, an official document from Russian customs.

3 **Q.** And did you have an understanding based on Mr. Beker's
4 statements how -- who would organize this paper?

5 **A.** If we couldn't do it, then Newcon could assist it and get
6 such paper from Russian customs.

7 **Q.** Turning to page 54, line 7, Mr. Beker said: "And the
8 other way around, to secure a letter from over there.
9 Gentlemen, we could no longer produce. You can go fuck
10 yourselves. For such-and-such reasons, here is a letter of our
11 Russian authorities, pursuant to such, m... m... and such
12 paragraph. It's not up to us and... and... you can go fuck
13 yourselves. And you write that Ramzi with the very same
14 boomerang. Based on all this... And here you are. How bad is
15 this?"

16 To which you reply on line 16. "I see. I see. I see."

17 Why did you say that?

18 **A.** Because I understood the proposed scenario where we would
19 take such paper and show this to Ramzi, and that would protect
20 ATN, limit liabilities and performance under the contract.

21 **Q.** When Mr. Beker refers on line 13 to "the very same
22 boomerang," that "you write with Ramzi with the very same
23 boomerang," what did you understand the phrase "the very same
24 boomerang" to mean?

25 **A.** Well, we would get such paper and then just pass it to

1 Ramzi to show that not performing is not really ATN's fault.

2 **Q.** Did the subject of a consolation prize come up again in
3 the next part of the conversation?

4 **A.** Yes.

5 **Q.** All right. Let's play that at page 54, line 17, to page
6 59 line 16.

7 (Audiotape played in open court.)

8 **Q.** If we could turn your attention to page 54, line 17. Mr.
9 Beker says: "As for the 3,000, the rest I'm willing... I'm
10 willing probably in case of a successful completion of this
11 entire scenario probably, I'm willing to discuss the matter
12 of... well, that consolation prize. Well, naturally it's not
13 going to be 100 percent of what you guys have today."

14 And on page 55, line 1 you say -- excuse me, line 3 you
15 say: "Well, in order for me to be able to discuss it here, can
16 I inquire... if you have some ideas, at least the
17 neighborhood?"

18 Why did you say that?

19 **A.** Mr. Beker was here making an offer. I just wanted to know
20 specifically what the offer was.

21 **Q.** And on line 19 of page 54 Mr. Beker refers to "completion
22 of this entire scenario." What did you understand him to mean
23 there?

24 **A.** Well, the scenario that -- by which ATN would not perform
25 on the remainder of Battalion Set I phase one -- I'm sorry,

1 Battalion Set II phase one where Newcon would deliver the
2 units.

3 **Q.** On page 55, line 7, Mr. Beker said -- was it line 6: "I
4 know that you guys are selling, if I'm telling it correctly, at
5 1,277."

6 To which you replied on line 12: "You are accurate
7 within a kopeck. What's a kopeck?"

8 **A.** That's an equivalent of one cent in Russian currency.

9 **Q.** And was Mr. Prilik -- Mr. Beker accurate within a kopeck?

10 **A.** Yes, he was.

11 **Q.** Page 55, line 20, Mr. Beker said: "I know that you are
12 buying for 1,050."

13 To which on page 56 you replied: "You are right again.
14 Accurate within a kopeck."

15 Was Mr. Beker accurate within a kopeck?

16 **A.** Yes.

17 **THE COURT:** Can you go back for just a minute? On
18 55, line 15 in response to something Mr. Beker says, you say:
19 "You have way too much information for the person." What did
20 you mean by that?

21 **THE WITNESS:** For the person who is not participating
22 in this contract.

23 **THE COURT:** Are you suggesting that Mr. Beker had
24 more information than you thought he would have?

25 **THE WITNESS:** Mr. Beker knows how much ATN buys the

1 product for, which is not advertised information.

2 He also knows how much ATN sells it for, which is
3 also -- ATN did not publicly made any statements on how much he
4 was selling the product to ITE. So that would require some
5 work to find out both of those figures with the exact
6 knowledge.

7 **BY MS. HAMILTON**

8 **Q.** Turning to page 56, line 19. Mr. Beker said: "You have
9 200, yes?" To which you replied, "Yes."

10 What did you understand that 200 that Mr. Beker was
11 referring to there to mean?

12 **A.** An approximate profit that ATN would be making is \$200 by
13 buying it at \$1,050 by selling it at 1277.

14 **Q.** And was that an accurate accounting of ATN's profits?

15 **A.** Yes, pretty near accurate.

16 **Q.** Page 57, line 11 Mr. Beker said: "I believe... actually,
17 by and large I believe that your net profit couldn't be higher
18 than \$100."

19 To which you replied beginning on line 14: "Well, with
20 this you're already laying it on thick."

21 Why did you say that?

22 **A.** My understanding the payment that he was about to offer
23 was based on amount of the profit that he was trying to figure
24 out that we were making. So I was negotiating. I wanted to be
25 believable. So I'm saying, look, 200 was a much more realistic

1 number than the 100.

2 **Q.** And on page 58, beginning on line 13 Mr. Beker said:
3 "That I would probably be willing to offer you, if you are
4 waiting for it. You don't want Monomakh's cap to fall off
5 you." Excuse my Russian accent. "So I'm willing to offer
6 it" --

7 First of all, what did you understand the reference to
8 Monomakh's cap to be?

9 **A.** Monomakh's cap, and that's the reference to Russian czar
10 crown.

11 **Q.** When Mr. Beker said you don't want the cap to fall off
12 you, what did you understand him to mean?

13 **A.** Well, there's two things. I'm being too proud to offer
14 anything myself; because he is waiting there for me to make an
15 offer, but I'm not making it. I'm not asking for anything.

16 So what he's saying, I'm offering to you. If you don't
17 want to bend over and let the cap would fall off from you; that
18 you're so proud like you're carrying crown, czar's crown, then
19 I will be offering you. And then he proposed the amount.

20 **Q.** Mr. Beker then did say on line 17: "I'm willing to offer
21 it to you... ah... for... Well, this contract's difference. I
22 want you to understand me correctly, that for the specific
23 contract's difference how much is left there - three, three and
24 a half? I don't remember how much."

25 What did you understand the reference to "three, three and

1 a half" on line 23 to mean?

2 **A.** Quantity of night vision goggles remaining to be delivered
3 on phase one Battalion Set II was approximately three and a
4 half thousand, 3600 units.

5 **Q.** Then on page 59, line 4 Mr. Beker said: "Yes, I... I
6 think that on the whole any half of your profit, that it's
7 fair."

8 To which you said: "That is to say in the neighborhood of
9 \$100."

10 Why did you say that?

11 **A.** Well, if the profit was approximately \$200, Mr. Beker is
12 offering half of that, that would be about a hundred dollars.

13 **Q.** Mr. Beker then on line 12 of page 59 said: "I can't... I
14 can't agree [sic] because as it were... oh, well, at any rate
15 between... between, as I thought, 75, 50, 100. Well, that is
16 to say... well, such is the range."

17 What did you understand the reference to those numbers,
18 75, 50, 100 to mean?

19 **A.** Well, that's exactly a payment that is approximately
20 50 percent. That's the range between \$50 to \$100 per each
21 goggle that is not being delivered.

22 **THE COURT:** I thought I heard when you read that, you
23 said, Ms. Hamilton, "I don't agree" or "I can't agree." It
24 says, "I can't argue," right? I thought I heard "agree."
25 Maybe I'm wrong.

1 **MS. HAMILTON:** I'm sorry.

2 **THE COURT:** At any rate, we should be clear about it
3 anyway, and it says "I can't argue."

4 **MS. HAMILTON:** That's right. Thank you, your Honor.

5 **THE COURT:** Maybe I heard wrong.

6 **MS. HAMILTON:** I have done a lot of reading today.

7 **THE COURT:** We have all done a lot of listening, too.

8 **MS. HAMILTON:** Yes, a lot.

9 **BY MS. HAMILTON**

10 **Q.** Now, after Mr. Beker offered to pay half of ATN's profits
11 on the Battalion Set II contract, did Mr. Beker discuss paying
12 ATN any money in advance?

13 **A.** Yes.

14 **Q.** If we could turn to page 59, line 16, through page 61,
15 line 14.

16 (Audio clip played)

17 **BY MS. HAMILTON**

18 **Q.** Could you turn your attention to page 60, line 2? You
19 say, "I would like some -- I don't know. Well, good-faith
20 deposit, or something like that. Is it possible?"

21 How did you come to request a good-faith deposit from
22 Mr. Beker?

23 **A.** From the discussion with FBI.

24 **Q.** What, if any, instructions did the FBI provide to you
25 regarding a good-faith deposit?

1 **A.** That once the agreement will be reached, to try to get a
2 good-faith deposit; an advance payment of some sort.

3 **Q.** On page 60, line 15, Mr. Beker said, starting on line 15,
4 "I don't even think that it should be discussed now. Well, you
5 know why? Because, to tell you the truth, not because I, as it
6 were, think that you are all idiots there, and you don't know
7 what you're doing, but I think that it would probably be better
8 if you flew in here for a day."

9 Did you understand where you were to fly in to, based on
10 Mr. Beker's request?

11 **A.** Yes. To Newcon.

12 **Q.** And where -- where physically?

13 **A.** Toronto, Canada.

14 **Q.** Did you fly up to Toronto, Canada?

15 **A.** No.

16 **Q.** Why not?

17 **A.** Because I didn't feel like flying to Canada would be a
18 good idea in this situation. I wouldn't be able to have
19 conversations that were, you know, recorded by the FBI.

20 **Q.** Now, what, if any, was your understanding about how the
21 decision of an advance payment was left, based on this
22 conversation?

23 **A.** At this point, Michael was reluctant to make an advance
24 payment.

25 **Q.** After discussing this -- the subject of a good-faith

1 deposit -- were there -- did you discuss any next steps? Did
2 you and Mr. Beker discuss any next steps to be taken by ATN or
3 Newcon?

4 **A.** Yes.

5 **Q.** Let's listen to the next part of the conversation, then,
6 which is page 61, line 10, through page 63, line 8.

7 (Audio clip played)

8 **BY MS. HAMILTON**

9 **Q.** If I could turn your attention to page 61, line 19,
10 Mr. Beker said, "That's why you should probably think about it
11 again. Consult Marc again. Consult Lyonya again. And if you
12 guys make such -- not because, as it were, I doubt that you
13 can't make such a decision alone. I think that such a
14 decision -- one just needs to consult on it, as it were, at
15 least. Isn't it so," to which you reply, "Yes, there are no
16 two ways about it."

17 Mr. Beker refers to Marc and Lyonya, on line 20 of page
18 61. Who did you understand Marc to be?

19 **A.** Marc Morgovsky, the CEO of ATN at that time.

20 **Q.** And who did you understand Mr. Beker's reference to Lyonya
21 to be?

22 **A.** Lenny Gaber, vice president of production of ATN at that
23 time.

24 **Q.** And on page 62, line 1, you said "there are no two ways
25 about it," in reply to Mr. Beker's statements.

1 Why did you say that?

2 **A.** Well, I'm confirming that I would -- if we're reaching
3 some sort of agreement here, I would need to confirm an
4 agreement with Marc and Lenny.

5 **Q.** Why did you believe that -- let's turn to page 62, line 8,
6 in which Mr. Beker said, "In the meantime, I would also be able
7 to prepare the ground, discuss it with ANHAM with Farouki. I
8 hope you heard this name -- Mr. Farouki."

9 Did you understand who Mr. Farouki was?

10 **A.** Yes.

11 **Q.** Who is Mr. Farouki?

12 **A.** The principal of ANHAM.

13 **Q.** And Mr. Beker refers to, starting on line 8, "I would also
14 be able to prepare the ground."

15 What did you understand "prepare the ground" to mean, in
16 this context?

17 **A.** To possibly discuss further action with ANHAM.

18 **Q.** And when you say the "further action," what do you mean?

19 **A.** Further on, it's opined in my next -- in his next comments
20 that there are two ways of going further. If we agree -- ATN
21 and Newcon -- then either they would deliver it through the
22 ANHAM, or the ANHAM would allow deliveries to TACOM directly,
23 but they would need to approve that.

24 **Q.** Did you and Mr. Beker discuss ATN's supplier at that time:
25 NPZ?

1 **A.** Yes.

2 **Q.** Let me turn you to page 63, line 4. I'm sorry.

3 So Mr. Beker referred to the delivery dates on line 4, and
4 says, "It seems -- as I understand the delivery dates, it seems
5 until the end of this year, or even sooner," to which you
6 reply, "Even sooner."

7 And, on line 7, Mr. Beker says, "Even sooner."

8 Had you discussed with Mr. Beker the delivery date --
9 ATN's delivery dates under the Battalion Set II contract?

10 **A.** Not at this point, no.

11 **Q.** Did you -- had you, at this point in time, discussed the
12 delivery terms with anyone from Newcon?

13 **A.** Yes, with Arie, prior -- in a conversation prior to --
14 taking place prior to this conversation.

15 **Q.** Let's now, then, go to the next portion of the
16 conversation that occurred, which is on 65, line 1, through
17 page 67, line 8.

18 (Audio clip played)

19 **BY MS. HAMILTON**

20 **Q.** If I could turn your attention to page 65, beginning at
21 line 16, Mr. Beker said, "Up to the point that, like, we
22 even -- and those devices that were turned out it most likely
23 that we also will discussed in order to take this and deliver
24 it there so that it would be faster."

25 What did you understand Mr. -- Mr. Beker was referring to

1 in that passage?

2 **A.** Oh, he was telling me here that the actual plan was to
3 deliver the very same units that were ready for us, and were
4 manufactured for ATN from the NPZ, and deliver these units to
5 remainder of the Battalion Set I phase one.

6 **Q.** And when you say, "the very same units," did you
7 understand that to also include the image-intensifier tubes
8 contained within the units?

9 **A.** Yes. That's my understanding.

10 **Q.** And Mr. Beker then says, "In any event, I've already got
11 not once, but at the very least, three times enough from
12 Mr. Metelskiy," and on page 66, line 2, says, "Just so you
13 know," to which you say -- reply, on line 3, "This is
14 interesting."

15 Why did you say, "This is interesting"?

16 **A.** Well, because I was surprised that Mr. Metelskiy would
17 make calls to Mr. Beker, because Mr. Metelskiy had all his
18 problems in Russia in the -- instigated, my understanding,
19 though, possibly by Newcon.

20 (Reporter requests clarification)

21 (Record read)

22 **MR. OSTERHOUDT:** I'd like to move to strike the last
23 part, about his understanding, because there's no basis for
24 that in the evidence.

25 **THE COURT:** That portion of it is stricken.

1 **MR. OSTERHOUDT:** Thank you.

2 **THE COURT:** It starts -- I don't know if that's where
3 the "instigated" starts, but that -- that section of it.

4 And unless he has some --

5 **MS. HAMILTON:** We'll move on, your Honor.

6 **THE COURT:** Thank you, but can you explain who
7 Mr. Metelskiy is, for the record?

8 **BY MS. HAMILTON**

9 **Q.** And who is Mr. Metelskiy?

10 **A.** That's the director of NPZ, the Russian supplier of
11 night-vision goggles to ATN.

12 **Q.** Did you and Mr. Beker discuss the subject of coördination
13 between Newcon and ATN any further in this conversation?

14 **A.** I'm sorry. Would you repeat the question?

15 **Q.** Sure. Did you and Mr. Beker continue to discuss the
16 subject of coördination between Newcon and ATN in this
17 conversation?

18 **A.** Yes.

19 **MS. HAMILTON:** Let's move to the next piece of the
20 conversation that occurred, which -- excuse me -- is page 67,
21 line 9, through page 67, line 24.

22 (Audio clip played)

23 **BY MS. HAMILTON**

24 **Q.** Turning your attention to page 67, line 12 -- or excuse
25 me. Line 10. Mr. Beker said, "Basically, I believe the time

1 has come when all of us need to coördinate our work, not to
2 spoil the market the way that it was spoiled with the zero
3 thing."

4 What did you understand Mr. Beker's reference to "the zero
5 thing" to mean?

6 **A.** Night-vision devices for Generation Zero.

7 **Q.** And what did you understand Mr. Beker's reference to "the
8 way it was spoiled" to mean?

9 **A.** The night-vision devices, Generation Zero, mainly were
10 used for commercial retail market in the United States, and
11 were -- and it was the easiest and the first market to be
12 populated, so to speak. And there were a lot of players in
13 Generation Zero market. And eventually, became commoditized,
14 and the profit margins were very suppressed. So those who
15 worked in Generation Zero usually would need to do a lot of
16 work for very little profit.

17 **Q.** And, turning your attention to page 67, line 1, Mr. Beker
18 said, "Well, one can't allow the only Photonis-DEP and ITT
19 would play."

20 What did you understand Mr. Beker to mean when he said
21 that "one can't allow that only Photonis-DEP and ITT would
22 play"?

23 **A.** Those were two major producers of Generation II and
24 Generation III. And Generation II and Generation III would be
25 much bigger, more important market. So they should not be the

1 only major players in that market.

2 **MS. HAMILTON:** So let's then play the next portion of
3 the conversation, which is page 68, line 1, through page 70,
4 line 16.

5 (Audio clip played)

6 **BY MS. HAMILTON**

7 **Q.** Was ITE a subject of -- a topic of conversation before
8 this conversation ended?

9 **A.** Yes.

10 **MS. HAMILTON:** Let's play that clip. It's page 70,
11 line 1, through page 73, line 1.

12 (Audio clip played)

13 **BY MS. HAMILTON**

14 **Q.** Turning your attention to page 71, line 1, Mr. Beker said,
15 "Once again, that's my opinion. It's not like I'm going to
16 impose it. Maybe I'm wrong. Maybe I'm mistaken. Maybe back
17 win again the next contract. Well, the only question is where
18 is he going to get the devices," to which you reply, "Well,
19 that's clear. Everything is clear."

20 Why did you say that?

21 **A.** Well, I was agreeing with Mr. Beker here that if Ramzi
22 wouldn't get the devices from ATN or Newcon, that would be
23 tough for him to get it somewhere else.

24 **MS. HAMILTON:** So, your Honor, that concludes
25 Tape Five, except there's one issue that was pointed out to me.

1 Because of the last-minute redaction, one portion of the
2 recording was divided into two. And apparently, that portion
3 was not played to the jury. So if we -- of Tape Five. So
4 could we maybe just play it into the record now, so when the
5 jury gets the transcript, it will be complete?

6 **MR. HOWDEN:** How long?

7 **THE COURT:** Which portion is that? How long is it?

8 **MS. HAMILTON:** It's three pages. Four pages.

9 **THE COURT:** But we're not going to have any questions
10 about it?

11 **MS. HAMILTON:** No questions. That's one of the
12 reasons --

13 **THE COURT:** You've got about three minutes to play
14 it.

15 **MS. HAMILTON:** Three minutes to play it. Play it
16 fast. This is page 28. Exhibit -- line 22.

17 (Audio clip played)

18 **MS. HAMILTON:** Thank you, your Honor.

19 **THE COURT:** Okay. That was really six pages, but
20 who's counting, right?

21 Okay. Ladies and gentlemen, we will recess for the
22 afternoon, to reconvene tomorrow. If it's any consolation,
23 none of the rest of the tapes are as long as this one, but I
24 won't tell you how many more tapes there are. Okay? But thank
25 you. You've been very patient and attentive. And I appreciate

1 that. So have a very pleasant afternoon and evening. And
2 we'll see you tomorrow morning at 8:30. Thank you.

3 And you may step down, Mr. Rocklin, but do not
4 discuss your testimony with any other persons who may be
5 witnesses until the trial is over.

6 And you follow the instructions I've given you before
7 also. Right? Okay. Everybody's got them in mind.

8 Okay. I'll see you tomorrow morning --

9 **MS. HAMILTON:** Thank you, your Honor.

10 **THE COURT:** -- at 8:30. Now, am I going to be
11 pleasantly surprised that, in fact, there is no Number 7?

12 **MS. HAMILTON:** There is no Number 7.

13 **THE COURT:** Well, okay, but it's not 10. There are
14 14 I count here.

15 **MS. HAMILTON:** One of them is not Mr. Rocklin's.

16 **THE COURT:** Oh, I see. Wow. Wow.

17 **MR. HOWDEN:** And it's in English.

18 **THE COURT:** And it's in English. Okay. Ah. Be
19 thankful for small favors, right? Okay. Well, have a good
20 afternoon and evening, everyone.

21 **MS. HAMILTON:** Thank you, your Honor.

22 **THE COURT:** And we'll see you.

23 **MR. HOWDEN:** Oh, your Honor, I was wondering. It's
24 my understanding Monday's a holiday.

25 **THE COURT:** Yes, Monday is a holiday.

1 **MR. HOWDEN:** Is that going to affect your dark day?
2 Is that going to affect your law-and-motion day?

3 **THE COURT:** Yes, it certainly is. It means I'm not
4 going to have any.

5 **MR. HOWDEN:** So we're going to proceed.

6 **THE COURT:** No criminal law or motion or sentencings
7 in the morning, but we'll see you on Tuesday.

8 **MR. HOWDEN:** Very good.

9 **THE COURT:** We're not pushing it. And, you know,
10 Mondays are great, you know, to have law and motion on, because
11 once in a while, you get a holiday.

12 (Whereupon at 1:35 p.m. further proceedings
13 in the above-entitled cause was adjourned
14 until Friday, January 14, 2011 at 8:30 a.m.)
15
16
17
18
19
20
21
22
23
24
25

I N D E XPLAINTIFF'S WITNESSESPAGEVOL.

Direct examination Resumed by Ms. Hamilton

376

3

E X H I B I T STRIAL EXHIBITSIDENVOL.EVIDVOL.

125

385

3

115

388

3

101 and 131

395

3

102

426

3

132

427

3

103

430

3

133

431

3

104

433

3

134

434

3

105

442

3

135

442

3

CERTIFICATE OF REPORTER

WE, LYDIA ZINN, and DEBRA PAS, Official Reporters for the United States Court, Northern District of California, hereby certify that the foregoing proceedings in CR. 07-765 MHP, United States of America v. Mendel Beker, et al., were reported by us, certified shorthand reporters, and were thereafter transcribed under our direction into typewriting; that the foregoing is a full, complete and true record of said proceedings as bound by us at the time of filing

The validity of the reporters' certification of said transcript may be void upon disassembly and/or removal from the court file.

_____/s/ Lydia Zinn_____

Lydia Zinn, CSR 9223, CRR

_____/s/ Debra L. Pas_____

Debra L. Pas, CSR 11916, CRR

Thursday, January 13, 2011